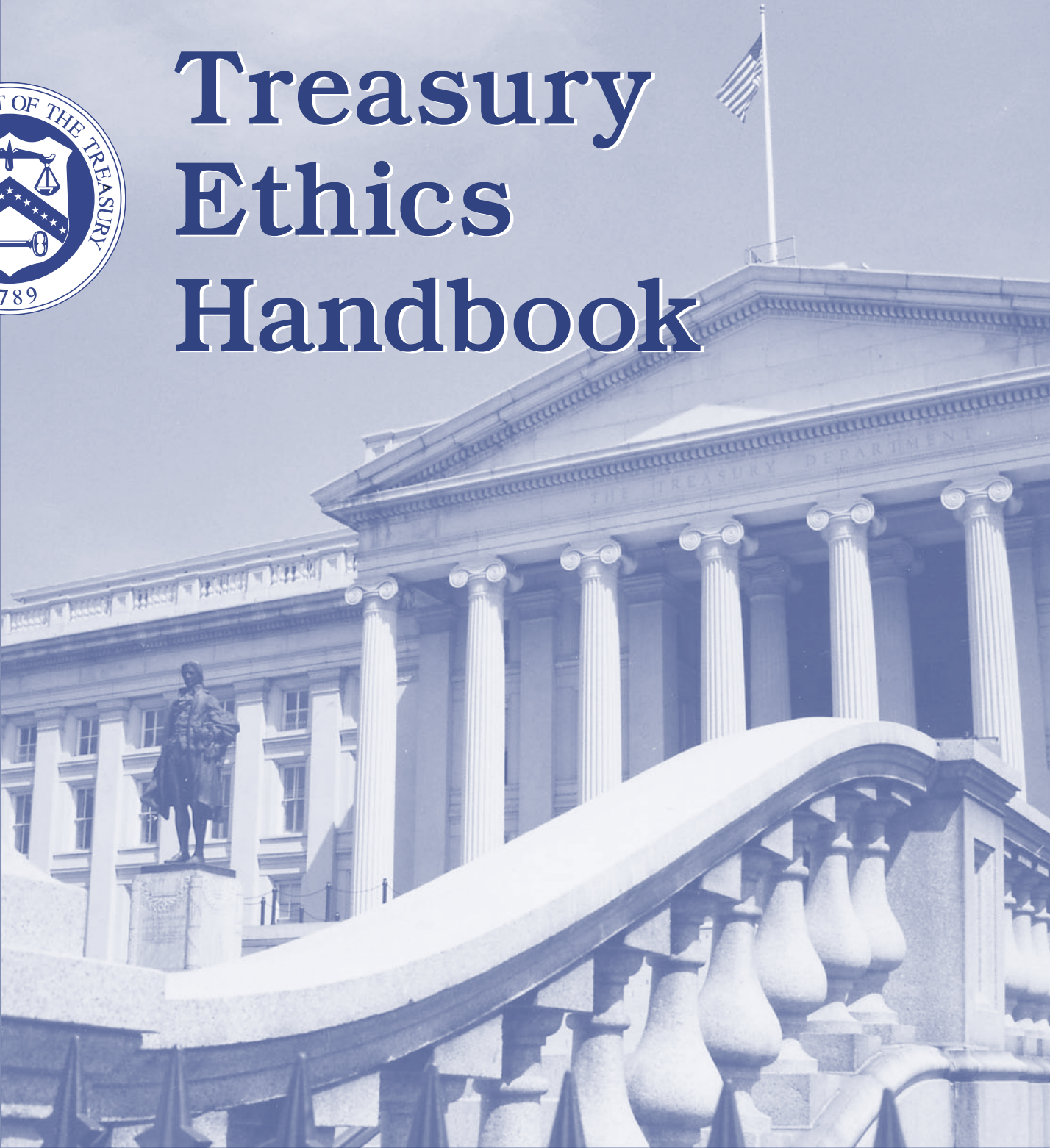




# Treasury Ethics Handbook



**July 2004**

*including*

**The Standards of Ethical Conduct for  
Employees of the Executive Branch**

*and*

**Supplemental Standards of Ethical Conduct  
for Treasury Employees**

# **Memorandum for all Treasury Employees**

July 2004

**FROM:** Kenneth R. Schmalzbach  
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**SUBJECT:** Treasury Ethics Handbook

The fundamental purposes of the Federal Government's ethics program are to ensure that the integrity of the Government's decision-making processes is not jeopardized by employees' real or apparent conflicts of interest and thereby to preserve the public's trust in those processes.

The Federal ethics statutes and regulations are designed to protect against actual and apparent conflicts of interest. We are obligated to understand the restrictions that these statutes and regulations impose upon us. In addition, we cannot devote full attention to the public's business if we are personally distracted by the need to defend our integrity.

To assist us in meeting these obligations, Treasury's ethics officials have published the Treasury Ethics Handbook, including interpretive guidance on a variety of recurring ethics issues, along with the Standards of Ethical Conduct for Employees of the Executive Branch and Treasury supplemental regulations.

I encourage you to seek additional guidance from Treasury ethics officials or your supervisors. As you carry out your official responsibilities, they stand ready to assist you in taking appropriate steps to maintain the integrity of Treasury's programs and thereby to preserve the public's confidence in its Government.

A list of departmental and bureau ethics officials is attached.

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# **Section 1:** *Financial Conflicts of Interest*

# **Financial Conflicts of Interest**

Treasury employees are subject to restrictions governing financial conflicts of interest. The restrictions are created by a criminal statute, 18 U.S.C. § 208. Regulations issued by the Office of Government Ethics (OGE), at Subpart D of the Standards of Ethical Conduct and 5 C.F.R. Part 2640, explain and implement that statute.

Please note that section 208 provides for criminal penalties and substantial civil fines for violations. Therefore, it is advisable to consult with an ethics official in the Office of the Assistant General Counsel (General Law and Ethics) or in your bureau's counsel's office whenever you have a question regarding the application of this statute. Moreover, when your official duties create a substantial likelihood that you may be assigned to a particular matter from which you are disqualified because of a financial conflict of interest, you should advise your supervisor or other person responsible for your assignments of that potential so that conflicts of interest can be avoided consistent with the agency's needs.

## **18 U.S.C. § 208 RESTRICTIONS**

Section 208(a) bars you from:

- Participating personally and substantially
- In any particular matter
- In which, to your knowledge, you, or anyone whose interests are imputed to you
- Has a financial interest,
- That would be affected directly and predictably by the particular matter,
- Unless a regulatory waiver applies or you receive an individual waiver.

## **Personal and Substantial Participation**

The term "personal and substantial participation" is a misnomer. Participation will be deemed to be substantial if it is of significance to the matter. Moreover, participation may be substantial even if it is not determinative of the outcome of a matter. A finding of substantiality is based not only on the effort devoted to the matter, but also on the importance of the effort. Thus, a series of peripheral involvements may not be substantial, but the single act of approving or participating in a critical step may be substantial. Participation can occur through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter, but it requires more than mere knowledge, perfunctory

involvement, or involvement in an administrative or peripheral issue. *See* 5 C.F.R. 2635.402(b)(4) and 2640.103(a)(2).

## **Particular Matter**

The term “particular matter” includes matters that involve deliberation, decision or action that is focused upon the interests of specific parties or a discrete and identifiable class of persons. Specific party matters include judicial or other proceedings, applications or requests for rulings, contracts, claims, controversies, charges, accusations or arrests, but do not necessarily require formal parties.

Particular matters of general applicability include legislation or rulemaking that is narrowly focused on the interests of a discrete and identifiable class of persons, such as matters focusing on a particular industry or geographic sector. Particular matters do not involve consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. For example, a proposed regulation modifying the disclosure requirements of national banks would be considered sufficiently focused on the interests of banks to constitute a particular matter. However, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons or a discrete and identifiable group of persons to constitute participation in a particular matter.

## **Financial Interest**

Financial interests arise from ownership of stock, bonds, mutual funds and real estate, as well as a salary, loan, or job offer. Financial interests arise whenever there is the potential for gain or loss to you or other persons whose interests are imputed to you, as a result of governmental action on the particular matter. Thus, it is irrelevant for purposes of section 208 if you act against your own self interest. In addition, the magnitude of any gain or loss that can result from the government’s action in the matter is irrelevant; the statute does not have a concept of *de minimis* effect. Finally, some holdings, such as stock in a company, result in attribution to the stock’s holder, of all the company’s financial interests; the financial interest of a stockholder is not limited to changes in the stock’s price.

## **Direct and Predictable Effect**

Section 208 has been interpreted so that a matter will be deemed to affect a financial interest only if that effect is “direct and predictable.” A particular matter will have a “direct” effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. Your work on a portion of the matter need not affect your financial interest in order to violate section 208. Rather, the analysis focuses on the Government’s potential actions in the particular matter and whether those actions

will affect the financial interest. As noted above, for employees who are shareholders of a company, “[a]ny matter that affects the issuing company’s prosperity is presumed to directly and predictably affect the financial interests of its shareholders.” See Public Financial Disclosure: A Reviewer’s Reference, p. 8-12 at [http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/reference/rf278guide\\_96.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reference/rf278guide_96.pdf).

## **Imputed Interests**

In addition to your own financial interests, the following additional interests are imputed to you for purposes of section 208:

- **Spouse and Minor Child** – Your spouse’s and minor children’s employment relationships and financial holdings frequently result in potential financial conflicts for you.
- **An Organization or Entity for which You Serve as Officer, Director, or Trustee** – Organizations that give rise to potential financial conflicts include both for-profit and non-profit entities, as well as family trusts.
- **A Person with whom You Are Negotiating or Have an Arrangement Concerning Prospective Employment** – For a detailed discussion of the rules governing seeking and negotiating for employment, see the *Treasury Ethics Memorandum* on this subject.
- **General Partners** – Your general partners’ holdings of which you have knowledge are attributable to you.

Some of the imputed interests referred to above are also the subject of limited regulatory exemptions, the application of which is discussed in greater detail in the *Treasury Ethics Memorandum on Regulatory Exemptions*.

## **Resolution of Financial Conflicts of Interest**

Financial conflicts of interest can be resolved only by recusal, termination of the financial interest through divestiture or resignation, an individual or regulatory waiver, or OGE-approved blind trusts.

## **Recusal**

Unless you are authorized to participate in a particular matter by an exemption or waiver, or the interest has been divested, you are required not to participate in a particular matter, in which, to your knowledge, you or any other person whose interests are imputed to you has a financial interest. Recusal or disqualification is accomplished by not participating in the particular matter. If you become aware of

the need to disqualify yourself from participation in a particular matter to which you have been assigned, you should notify the person responsible for your assignments. You need not file a written disqualification, unless you are asked to do so by an agency ethics official. However, you may elect to create a written record of your actions by providing written notice to your supervisor or other appropriate official, and doing so can assist in deflecting later criticism.

### **Divestiture of the Disqualifying Asset**

Upon sale or other divestiture of a financial interest that causes your disqualification from participation in a particular matter, you are no longer prohibited from participating in the matter. In some cases, you may be required to sell or otherwise divest of the disqualifying financial interest if the agency determines that a substantial conflict exists between your financial interest and your duties. Of course, if you otherwise would be disqualified from participation, you may voluntarily sell or otherwise divest yourself of the interest.

### **Certificate of Divestiture**

If you are directed to divest a financial interest, you may be eligible to defer the tax consequences of divestiture pursuant to a certificate of divestiture. A certificate of divestiture is a document issued by the Director of OGE that allows for deferring taxation of the capital gains that result from the sale of property. The purpose of the certificate of divestiture program is to minimize the burden that may result from sales of assets because of the conflict of interest laws. **However, if you divest before OGE issues the certificate of divestiture, you will not be eligible for this tax treatment.** The procedural requirements for seeking a certificate of divestiture are extensive and require that the Designated Agency Ethics Official submit a request to OGE on behalf of the eligible employee. For these reasons, please consult with an ethics official if you believe you are eligible for a certificate of divestiture.

### **Individual Waivers - 18 U.S.C. § 208(b)(1)**

Pursuant to 18 U.S.C. § 208(b)(1), the Treasury official responsible for appointing you to your position, in consultation with an ethics official, may issue a written waiver of your disqualification to permit you to participate in a particular matter that would affect your financial interest. The waiver must be based on a determination that the disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of your services to the Government. In making this determination, the official may consider the nature of the interest, the identity of the person whose financial interest is involved, the dollar value of the interest, the nature and importance of your role in the matter and the sensitivity of the matter. Prior consultation by the agency ethics official with OGE generally

is required and a copy of the waiver must be provided to OGE and made publicly available by the agency upon request.

### **Regulatory Exemptions - 5 C.F.R. Part 2640**

OGE by regulation has exempted certain financial interests held by Federal employees from the application of 18 U.S.C. § 208. Several of the more common exemptions cover financial interests in diversified mutual funds, diversified employee benefit plans, and publicly traded securities valued at \$15,000 or less, to permit participation in specific party matters; and securities valued at \$25,000 or less, to permit participation in matters of general applicability. If you have holdings in more than one company affected by matters of general applicability, you can work on the assignment if the combined value of those holdings is no more than \$50,000. These and other exemptions are discussed in greater detail in the *Treasury Ethics Memorandum on Regulatory Exemptions*.

### **Conclusion**

The application of the restrictions arising from financial conflicts of interest and the means for resolving such conflicts are not intuitive. If you have any questions regarding financial conflicts, please consult with an ethics official.



# **Regulatory Exemptions from Financial Conflicts**

The Office of Government Ethics by regulation has exempted certain categories of financial interests from the application of 18 U.S.C. § 208. For purposes of 18 U.S.C. § 208, the financial interests of your spouse, minor child, or general partner; an organization in which you are serving as officer, director, trustee, general partner or employee; or a person or organization with whom you are negotiating or have an arrangement for future employment, are attributable to you. Several of the more common regulatory exemptions are discussed below. A regulatory exemption applies only if the specific criteria in the applicable exemption are met. If you don't meet the exemption criteria, you may inadvertently violate a criminal statute. For this reason, please consult with an ethics official whenever you have a question regarding the application of 18 U.S.C. § 208 or the regulatory exemptions. See *Treasury Ethics Memorandum on Financial Conflicts of Interest* for a full discussion of 18 U.S.C. § 208.

## **Publicly Traded and Municipal Securities**

The dollar value of the regulatory exemptions applicable to publicly traded and municipal securities differ depending on whether the particular matter is a specific party matter or a matter of general applicability. In the case of specific party matters, there are also different exemption thresholds depending on whether the financial interest derives from a specific party or from a "nonparty" participant.

### **1. \$15,000 De Minimis Exemption for Specific Party Matters**

You may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from ownership by you, or your spouse or children, of publicly traded or municipal securities, the aggregate market value of which does not exceed \$15,000. Specific party matters include judicial or other proceedings, applications or requests for rulings, contracts, claims, controversies, charges, accusations or arrests.

### **2. \$25,000 De Minimis Exemption for Matters affecting Nonparties**

You may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from ownership by you or your spouse or minor children, of securities issued by an entity that is not a party to the matter, but that is affected by the matter, provided that the securities are publicly traded, municipal or long-term Federal Government securities, the aggregate market value of which does not exceed \$25,000.

### **3. \$25,000 De Minimis Exemption for Matters of General Applicability**

You may participate in any particular matter of general applicability,

such as rulemaking or legislation, in which the disqualifying financial interest arises from ownership by you or your spouse or minor children, of publicly traded securities or municipal securities, the aggregate market value of which does not exceed \$25,000 in any one entity affected by the matter and \$50,000 in all affected entities.

A particular matter of general applicability includes legislation or rulemaking that is narrowly focused on the interests of a discrete and identifiable class of persons, such as matters focusing on a particular industry or geographic sector.

## **Mutual Funds**

### **1. Diversified Mutual Funds**

You may participate in any particular matter affecting one or more holdings in any amount of a diversified mutual fund or diversified unit investment trust if the disqualifying financial interest in the matter arises because of your ownership of an interest in the fund or trust. A mutual fund or unit investment trust is considered diversified if it has no stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.

### **2. Sector Funds**

You may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not in the sector in which the fund concentrates, and where the potential disqualifying financial interest in the matter arises because of your ownership of an interest in the fund. A sector fund is a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

For example, if you own shares in XYZ Health Care Fund and are assigned to work on a computer contract, you may participate in a decision to award a computer contract to IAM Computer Company, notwithstanding the fact that XYZ Health Care Fund owns shares of common stock in IAM Computer Company, since the computer company is not invested in the health care sector.

You also may participate in a particular matter affecting a holding of a sector mutual fund if the disqualifying financial interest arises because of ownership of an interest in the sector fund, as long as the aggregate market value of the interest in the sector fund(s) does not exceed \$50,000. For example, if you own \$35,000 worth of shares in Virtual Energy Fund,

you may rely on this exemption to participate in deliberations involving proposed energy legislation that would affect the tax treatment of certain energy interests, since your holding in the Virtual Energy Fund does not exceed the \$50,000 threshold.

## **Employee Pension Plans**

You may participate in any particular matter affecting one or more investments of an employee benefit plan if the disqualifying financial interest in the matter arises from participation in any of the following:

- Thrift Savings Plans for Federal employees;
- Diversified Pension Plan established or maintained by a State government; or
- Diversified Employee Benefit Plan, provided that the investments of the plan are administered by an independent trustee and you do not participate in the selection of the plan's investments. Note: You may, however, direct your contributions to be divided among several different categories of investments, such as stocks, bonds or mutual funds and still rely on this exemption. The regulatory exemption for employee benefit plans does not apply to profit sharing or stock bonus plans.

## **Federal Government Securities**

### **1. Long-Term Federal Government Securities**

The regulatory exemptions applicable to your ownership of long-term Federal Government securities also differ depending on whether the particular matter is a specific party matter or a matter of general applicability. The term “long-term Federal Government security” is defined to mean “a bond or note, except for a U.S. Savings bond, with a maturity of more than one year, issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.”

You may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from ownership by you or your spouse or minor children, of long-term Federal Government securities, the aggregate market value of which does not exceed \$15,000. Likewise, you may participate in any particular matter of general applicability in which the disqualifying financial interest arises from ownership by you or your spouse or minor children, of long-term Federal Government securities, the aggregate market value of which does not exceed \$50,000.

## **2. Short-Term Federal Government Securities**

You may participate in any particular matter in which the disqualifying financial interest arises from ownership of short-term Federal Government securities or U.S. Savings bonds. "Short-term Federal Government security" means a bill with a maturity of one year or less when issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

## **Tax-Exempt Organizations**

If you are an unpaid officer, director, trustee or employee of a tax-exempt organization, but you play no role in making investment decisions for the organization, you may participate in any particular matter in which the disqualifying financial interests arise from the organization's ownership of publicly traded, municipal or long-term Federal Government securities, provided that the matter affects only the organization's investments and not the organization directly, and the organization's relationship to the issuer is only that of investor.

## **General Partners**

You may participate in any particular matter in which the disqualifying financial interest arises from your general partner's ownership of publicly traded, municipal, or long-term Federal securities, provided that: (1) the value of the securities does not exceed \$200,000 (and ownership of the securities is unrelated to the partnership); or (2) your only relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

## **Conclusion**

The regulatory exemptions listed above are the ones upon which employees most often rely. Other regulatory exemptions may also apply depending on the particular facts and circumstances. If you have any questions regarding the application of these or the other regulatory exemptions or concerning the application of 18 U.S.C. § 208 itself, please consult with an ethics official.

# Recusal

“Recusal” as it relates to ethics matters means nonparticipation, and it is used synonymously with the word “disqualification.” One recuses or disqualifies by not acting in a matter so as to avoid an actual or perceived conflict of interest under one or more of the Government-wide standards of ethical conduct or the financial conflict of interest statute. When you recuse yourself from a matter, you decide not to participate in any substantive way in the matter. “Participate” for this purpose includes providing advice, opinions or recommendations, or conducting an investigation, as well as making decisions.

There is no legal requirement for a recusal unless circumstances would call for an employee’s participation in some matter. It is also not necessary for an employee to decide whether to participate in any particular matter until such time as the matter comes before him for action. However, it often facilitates accomplishing an organization’s mission if an employee announces his intent to recuse if a particular matter should arise in the future.

There is no requirement that a recusal be in writing, although it is often helpful for an official to have a written recusal for distribution to staff members who then will be better able to screen incoming matters to ensure that the official does not take action in a matter in which her participation would be inappropriate. Also, a written recusal serves as clear evidence of intent if questions are raised subsequently concerning an official’s participation in any particular matter.

Similarly, there is no requirement that an official notify his supervisor of his intent to recuse himself from participation in any matter. However, supervisory notification often helps to assure that matters covered by the recusal will not be assigned to the official in the future and serves as evidence that the official has decided not to participate in a matter.

Finally, it is important to note that it would be inappropriate for an employee to recuse himself from a matter merely because he or she does not wish to be involved. Under the Standards of Conduct, employees are expected to perform their duties fully unless their participating in a matter will result in a conflict, including an inability to act impartially, or will result in an appearance of a conflict significantly detrimental to the public’s legitimate perception of the fairness of the Governmental processes involved. Rules contemplate that an employee will be recused only where there is an actual financial conflict or where there is a question of an employee’s impartiality in a matter. Even under those circumstances, the agency may authorize an employee to participate in a matter when it is appropriate to issue either a statutory or regulatory waiver.

## **Section 2:** *Personal Conflicts of Interest*

# Personal Conflicts of Interest

The Standards of Ethical Conduct establish procedures for employees to use when their participation in a matter does not rise to the level of a financial conflict of interest under 18 U.S.C. § 208<sup>1</sup>, but when they have certain other kinds of interests that might trigger concerns about their abilities to act impartially.

These concerns most often arise in the context of an employee being asked to work on a matter in which a person with whom the employee has a close personal relationship is or represents a party to the matter or if it would affect the financial interests of a member of the employee's household. However, the procedures devised for such situations can and should be used to determine whether an employee should or should not participate in a particular matter whenever the employee is concerned that circumstances other than those specifically described in this memorandum would raise a question regarding his impartiality.

## Seeking Assistance

An employee may seek the assistance of his supervisor and/or a Treasury ethics official for guidance with the impartiality assessment. Employees are encouraged to contact an ethics official if they have any questions regarding impartiality issues.

## Impartiality Standard

The impartiality standard states that you **cannot**:

- Participate in particular matters involving specific parties;
- If you know the matter will have a direct and predictable effect on a financial interest of a member of your household **or if a person with whom you have a covered relationship is or represents a party**;
- And the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter;
- Unless you receive an authorization to participate from a Treasury ethics official.

**What is a particular matter involving a specific party?** Any judicial or other proceeding, application, request for a ruling or other determination, contract, controversy, claim, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

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<sup>1</sup> For a detailed explanation of 18 U.S.C. Section 208, please see the *Treasury Ethics Memorandum on Financial Conflicts of Interest*.

**What is a covered relationship?** You have a “covered relationship” with a:

- Person with whom you have or seek a business or other financial relationship, other than a routine consumer transaction;
- Member of your household or a relative with whom you have a close personal relationship (A member of your household includes all those persons who live with you, e.g., adult children, significant others, housemates. Relatives with whom you have a close personal relationship would include your uncle with whom you get together for a monthly golf game, but not an aunt you haven’t seen in ten years.);
- Person your spouse, parent or dependent child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee (It doesn’t matter whether the work involves the receipt of compensation.);
- Person you have, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee (It doesn’t matter whether the work involved the receipt of compensation.); or
- Organization in which you are an active participant.

**What is active participation?** Active participation can include, but is not limited to involvement as an organization’s committee or subcommittee spokesperson or chairperson, or participation in directing the activities of the organization. If you devote significant time to coordinating the group’s promotion or fund-raising activities, you are actively involved in that organization. However, just paying dues, or donating or soliciting financial support, does not, in itself, constitute active participation.

**How can you resolve a personal conflict?**

- Recuse (Disqualify yourself from participating in the matter.)
- Terminate Relationship (Resign from the organization with which you have a conflict.)
- Obtain authorization to participate (based on the standard that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations if you do participate)



## **How do you obtain authorization to participate?**

You may request authorization to participate from a Treasury ethics official. A Treasury ethics official may grant such authorization based on a determination that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. To make such a determination, a Treasury ethics official should consider all relevant facts and circumstances, which may require that you provide the ethics official with information about:

- The nature of the covered relationship involved;
- The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- The nature and the importance of your role in the matter, including the extent to which you will be called upon to exercise discretion;
- The sensitivity of the matter;
- The difficulty of reassigning the matter to another employee; and
- Adjustments that may be made in your duties that would reduce or eliminate the likelihood that a reasonable person would question your impartiality.

Note: Your reputation for honesty and integrity is not a relevant consideration for purposes of these determinations.

Authorization to participate must be obtained before you participate and is required to be documented in writing.

## **What if it is best not to participate?**

Where an agency designee determines that your participation should not be authorized, you will be disqualified from participating in the matter. You then should take appropriate steps to ensure that you do not participate. This may include notifying your supervisor and coworkers of the disqualification, which may be accomplished either verbally or in writing.

## **Section 3:** *Invitations and Gifts*

# Invitations and Gifts

## The General Rule

Under the Standards of Conduct, an invitation to an event is considered a gift. Gifts are defined to include any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. They include services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. This memorandum discusses the application of the gift rules to gifts of invitations. For a detailed discussion on the application of the gift rules to tangible gifts and foreign gifts, see the *Treasury Ethics Memorandum on Tangible Gifts and the Gift Unit*.

When you receive an invitation to attend a reception, or other event, either because of your official position or from a so-called “prohibited source,”<sup>1</sup> the Standards of Conduct ordinarily require that you decline the invitation. However, several exceptions to this rule are set forth below.

Even if an exception applies to your receipt of a gift, you may not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept a gift from the same or different sources on a basis so frequent that it creates a reasonable perception that public office is being used for private gain; or
- (4) Accept a gift in violation of any statute. Relevant statutes include 18 U.S.C. § 201, which forbids the acceptance of bribes or illegal gratuities; 18 U.S.C. § 209, which forbids the acceptance of any augmentation of Federal salary from outside sources.

## Common Gift Exceptions

### Speaking Engagements:

When you are assigned to participate as a speaker or panel participant or otherwise present information on behalf of the agency at a conference or other event, you may accept the invitation to attend the event and free attendance at the event, provided

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<sup>1</sup> A “prohibited source” is defined in section 2635.203(d) of the regulations as one who (1) seeks official action by the employee’s agency, (2) does business or seeks to do business with the employee’s agency, (3) conducts activities regulated by the employee’s agency, (4) has interest that may be affected by the performance or the nonperformance of the employee’s official duties, or (5) is an organization a majority of whose members are described in items (1) through (4).

by the sponsor, on the day of your presentation. Your participation in the event is viewed as a customary and necessary part of your performance of the assignment and does not involve a gift to you or to the Treasury.

**Gifts of \$20 or Less:**

If the cost of a gift of attendance is \$20 or less (including tax and tip for gifts of restaurant meals), you may accept the gift provided that the aggregate market value of gifts received from any one source under this exception does not exceed \$50 in any calendar year. If the value of any gift offered on a single occasion exceeds \$20, you cannot pay the excess of the gift's value over \$20 to accept it.

**Gifts from Friends and Relatives:**

You may accept an invitation to an event from a long-time friend or from a relative irrespective of the cost when it is clear that the friend or relative (1) personally pays for your attendance at the event or, if not, (2) has total discretion as to whom he will invite to the event.

You may also accept a gift of an invitation that is based on your spouse's business or employment activities where it is clear that the invitation has not been offered or enhanced because of your official position.

**Gifts from Business or Employment Relationships:**

You may accept an invitation to an event, such as a holiday party, resulting from outside employment or a past business or employment relationship when it is clear that the benefits have not been offered or enhanced because of your official position. Consult with an ethics official for advice on such invitations.

**Gifts from Representatives of Foreign Governments:**

The Foreign Gifts and Decorations Act permits the acceptance of tangible and intangible gifts valued at \$285 or less from a foreign government representative.

**Widely Attended Gatherings:**

Another exception applies for invitations to large receptions or similar events under certain circumstances. Again, these considerations apply only when you have received the invitation because of your official Treasury position or where the invitation is from a "prohibited source." You may accept an invitation to attend a party or similar event if:

- the event constitutes a "widely attended gathering." A gathering is considered "widely attended" if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, or, if the invitation is extended by someone other than the

sponsor of the event, more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$285 or less, and

- a determination is made by an agency ethics official that the employee's attendance is in the interest of the agency because it will further agency programs and operations.

#### **Written Determination Required:**

If the sponsor of a widely attended event has interests that may be substantially affected by the performance or nonperformance of your official duties or is an organization or association the majority of whose members have such interests, the agency designee must make a written finding that the agency's interest in your participation in the event outweighs any concern that acceptance of the invitation may create an appearance of improper influence. Treasury's ethics officials serve as the agency designees in consultation with the appropriate policy officials. The ethics officials consider the following factors in determining whether to make such a finding:

- the importance of the event to the Department,
- the nature and sensitivity of any pending matter affecting the interests of the sponsor or the event,
- the significance of your role in any such matter,
- the purpose of the event,
- the identities of other expected participants, and
- the monetary value of the gift of free attendance.

Finally, you also may accept any food, refreshments and entertainment furnished to all other attendees at a widely attended gathering as an integral part of the event. When others in attendance at such a gathering will generally be accompanied by spouses, the agency designee may authorize you to accept a sponsor's invitation to your spouse to participate in all or a portion of the event at which your free attendance is permitted.

#### **Social Invitations from Persons Other Than Prohibited Sources:**

You may accept food, refreshments, and entertainment, but *not* travel or lodging expenses, at a social event attended by several persons where: (1) the invitation is from a person who is not a prohibited source; and (2) no fee is charged to any person in attendance.

**Invitations to Political Events:**

You may accept meals, lodging, transportation and other benefits, including free attendance at events from political organizations described in 26 U.S.C. § 527(e) when these gifts are provided in connection with your active participation in political management or political campaigns as permitted by the Hatch Act. For additional guidance on the Hatch Act and Political Activity, see Section 6 of this Handbook.

**Awards and Honorary Degrees:**

Government officials may be invited to speak at commencement exercises or may be offered other honorary or public service awards. If you are asked to participate as a commencement speaker, or if you are bestowed with a public service or other award, certain exceptions under the ethics regulations may permit their acceptance:

- For awards of \$200 or less (other than cash or an investment interest): You may accept gifts that are a *bona fide* award or incident to a bona fide award that is given for meritorious public service or achievement and are given by a person who does not have interests that may be substantially affected by the performance or nonperformance of your duties or by an association or other organization the majority of whose members do not have such interests.
- For awards given for purposes described above, with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by persons who have interests that may be substantially affected by the performance or nonperformance of your duties or by an association or other organization the majority of whose members have such interests, an ethics official must make a written determination that the award is made as part of an established program of recognition under which: (1) awards have been made on a regular basis or funded to ensure continuation on a regular basis and (2) selection of award recipients is made pursuant to written standards.
- You may accept an honorary degree from an institution of higher education based on a written determination by an ethics official that the timing of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.
- You (and members of your family) may accept meals and entertainment at the event in connection with the award or honorary degree presentation.

## **Financial Disclosure Reporting Requirements**

If you are required to file a financial disclosure report (SF 278 or OGE Form 450), you must disclose any gifts you have received under the exceptions listed above from any single source which aggregate \$285 or more in value. Consult an ethics official for possible exceptions regarding reporting requirements.

## **Concluding Observation**

Even if an exception permits acceptance of a gift, it is never inappropriate, and frequently prudent, to decline a gift offered by a prohibited source or offered because of your official position.

# **Tangible Gifts and the Gift Unit**

## **The General Rule**

According to the Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts from Outside Sources, Federal employees are prohibited from accepting any gifts, foreign or domestic, from a prohibited source or given because of the employee's official position unless the gift meets certain exceptions as set forth in the standards. This memorandum discusses the application of the ethics rules regarding tangible gifts and foreign gifts. For a detailed discussion on the application of the gift rules to invitations see the *Treasury Ethics Memorandum on Invitations and Gifts*.

Even if an exception applies, you may not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept a gift from the same or different sources on a basis so frequent that it creates a reasonable perception that public office is being used for private gain; or
- (4) Accept a gift in violation of any statute. Relevant statutes include 18 U.S.C. § 201, which forbids the acceptance of bribes or illegal gratuities; 18 U.S.C. § 209, which forbids the acceptance of any augmentation of Federal salary from outside sources.

## **Definition of Gifts:**

"Gifts" are defined to include any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. They include services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred.

## **Common Gift Exceptions**

### **Exception for Gifts of \$20 or Less:**

You may accept unsolicited gifts having an aggregate market value of \$20 or less per source, per occasion, provided that the aggregate market value of individual gifts received from any one person does not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds or certificates of deposit.



If the market value of a gift (or the aggregate market value of gifts offered to you on any single occasion) exceeds \$20, you may decline any distinct and separate item in order to accept those items aggregating \$20 or less. You may *not* pay the difference in order to accept any gift that exceeds the \$20 limit. However, you may purchase any domestic gift over \$20 not otherwise permitted to be retained by you, by paying the donor the gift's market value.

**Market Value:**

"Market value" refers to the retail cost that an employee would incur to purchase the gift. The Gift Unit will ascertain the market value of any gift as a service to Treasury employees who complete and submit the Gift Register Form, in accordance with Departmental Offices (DO) and bureau procedures. An employee (or designated official) who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality.

**Exception for Gifts from Family and Friends:**

You may accept a gift from a long-time friend or from a relative irrespective of the cost when it is clear that the gift is motivated by a family relationship or personal friendship rather than your position. Relevant factors to consider include the history of the relationship and whether the relative or friend personally pays for the gift.

**Exception for Gifts from Representatives of Foreign Governments:**

The Foreign Gifts and Decorations Act permits the acceptance of tangible and intangible gifts of "*minimal value*" from a foreign government representative.

Treasury Directive 61-04 states that employees "are prohibited from requesting, or otherwise encouraging, the tender of a gift or a decoration from a foreign government or from accepting or retaining a gift or decoration when to do so would create an adverse consequence to the United States."

You may accept and retain a gift of "*minimal value*" tendered and received as a souvenir or mark of courtesy, subject to the following restrictions:

- Where more than one tangible item is included in a single presentation, the entire presentation shall be considered as one gift, and the aggregate value of all items taken together must not exceed minimal value.
- You may accept any items from the same source totaling minimal value or less per occasion, provided the receipt is consistent with the Foreign Gifts and Decorations Act or the Government-wide Standards of Ethical Conduct for Employees of the Executive Branch. The designated official or the DO Gift Unit shall make this determination.

**Minimal Value:**

“Minimal value” refers to the amount set by GSA with respect to gifts given by representatives of foreign governments in regulations found at 41 C.F.R. Section 102-42.10. It is currently \$285 but is subject to periodic upward adjustments under those regulations.

**The Gift Unit:**

The Gift Unit in the Office of the Curator, Management and Administrative Programs, provides DO and bureau employees with a system to avoid any potential ethical or legal issues involving the acceptance of tangible gifts from either domestic or foreign sources.

**Designated Official:**

“Designated official” refers to the individual appointed within each bureau to receive, evaluate and dispose of foreign gifts tendered to employees. The Gift Unit, Office of the Curator, serves as the point of contact for DO employees. The Gift Unit also serves as the point of contact for bureaus who do not have a designated official. If a bureau does not use the services of the Gift Unit, a bureau employee who receives a gift should contact their bureau ethics official for advice.

**Procedures for Reporting and Depositing Domestic Gifts**

The Gift Unit will obtain a fair market value for the gift and legal advice from the Office of the Assistant General Counsel for General Law and Ethics, regarding the appropriate retention or disposition of a gift. DO employees should complete a Gift Register Form (DO Form 40-01.1) for gifts offered to them in connection with their position.

For DO employees, the Gift Unit will make any necessary shipping arrangements to return a gift to a donor if the gift is valued over \$20, and if it is not otherwise permitted to be retained by the employee. If returning a gift would cause offense or the gift is of value to the Department, the gift may be retained by the Department for appropriate disposition.

**Perishable Items:**

A perishable item that may not be accepted under the Standards of Conduct may be given to an appropriate charity, shared within your office, or destroyed. However, if the donor has interests that may be substantially affected by the performance or nonperformance of your official duties or is an organization or association the majority of whose members have such interests, disposition of the perishable item is at the discretion of your supervisor or agency ethics official.

## **Procedures for Reporting and Depositing Foreign Gifts**

### **Procedures for Reporting Gifts from Representatives of Foreign Governments:**

DO employees shall complete a Gift Register Form and submit it along with the gift(s) to the Gift Unit, Office of the Curator.

Bureau employees who receive a tangible gift from a representative of a foreign government shall contact their bureau designated official or their bureau ethics official for guidance. The DO Gift Unit handles gift items from those bureaus that do not have a designated official.

The following information will assist the official in determining whether the gift may be retained:

- Name and position of employee
- A brief description of the gift and the circumstances of its presentation
- If a gift from a representative of a foreign government, the identity of the foreign government and the name and position of the individual who presented the gift
- The date of receipt of the gift

If the gift is determined to be of minimal value or less, and the gift is acceptable under the provisions of the Foreign Gifts and Decorations Act, it will be returned to the employee.

### **Disposition of Gifts from Representatives of Foreign Governments:**

You may retain gifts of minimal value or less from foreign government officials. In the case of a gift valued in excess of \$285 from a foreign government official, it will be retained by Treasury for appropriate disposition. In accordance with the Foreign Gifts and Decorations Act, gifts valued over \$285 that are not retained for official Treasury use will be deposited with the General Services Administration (GSA) for possible subsequent sale. You may indicate if you have an interest in purchasing a foreign gift over \$285. However, since any such purchase must be approved by the Secretary of State, there is no assurance that the item will be made available by GSA to purchase.

## **Financial Disclosure Reporting Requirements**

If you are required to file a financial disclosure report (SF 278 or OGE Form 450), you must disclose any gifts you have received under the exceptions listed above from any single source which aggregate \$285 or more in value.

### **Concluding Observation**

Even if an exception permits acceptance of a gift, it is never inappropriate, and frequently prudent, to decline a gift offered by a prohibited source or offered because of your official position.

### **Points of Contact:**

For questions about processing gifts, contact the Gift Unit, Office of the Curator, or your bureau designated official.

For legal advice about gifts, contact your bureau ethics counsel.

# **Gifts between Employees**

## **What is a gift?**

Almost anything of monetary value, such as cash, meals, paperweights, trips, concert tickets, and services.

## **What is not a gift?**

A cup of coffee, modest refreshments which are not part of a meal, and items of little intrinsic value such as greeting cards, plaques, and certificates intended solely for presentation. Carpooling or other such mutual arrangement involving another employee or employees is also not a gift, provided there is a proportionate sharing of the effort or expense involved.

## **The Basic Rule**

You may not –

- Give, or make a donation toward, a gift to an immediate supervisor or to any other official superior;
- Solicit a contribution from another employee for a gift to an official superior of either the requesting employee or the individual who is asked to contribute;
- Accept a gift from subordinates in the employee's chain of command; or
- Accept a gift from a lower-paid non-subordinate employee, unless there is a personal relationship that justifies the gift.

An official superior is your immediate supervisor, anyone who has responsibility for your official performance evaluation, and anyone above your supervisor in the chain of command.

## **Exceptions**

### **Personal Relationships:**

Although employees may generally not accept gifts from other employees who receive less pay, this prohibition does not apply if–

- the two employees are not in a superior-subordinate relationship AND
- a personal relationship justifies the gift.

If these two criteria are met, the employees/ friends would be free to exchange gifts of any value at any time of the year. Note that a personal relationship generally implies that you spend time together outside of the office.

**The \$10 Rule:**

In connection with annually recurring occasions on which gifts are traditionally exchanged – such as birthdays, Secretary's Day, Christmas, Hanukkah, Kwanzaa, or New Year's – you may give to, or accept from, any other employee–

- on an occasional basis, items other than cash which, considered together, have a market value of \$10 or less.

**Example:**

A few weeks before Christmas, a clerk is hired to help the office secretary. The secretary, although paid at a higher salary rate, does not supervise the clerk. Several employees are giving individual gifts to the secretary. The clerk has not yet developed personal friendships with co-workers and knows little about the likes and dislikes of the secretary. Motivated by the holiday spirit, but stymied by limited gift options, the clerk decides to give the secretary a \$15 poinsettia. Can the secretary accept the gift?

**No.** Without demonstrating a personal friendship that would independently justify the gift, the secretary cannot receive a gift from the lesser paid clerk that exceeds the \$10 maximum.

**Food and Refreshments Shared in the Office:**

Your office can celebrate birthdays, including those of supervisors, and other reoccurring occasions, for example, without violating the rules, provided that these events take place in the office and all contributions of nominal amounts are voluntary.

**Hospitality Gifts:**

You may give to an official superior or accept from subordinate employees and other employees receiving less pay than you, personal hospitality gifts, if–

- the gift of hospitality is provided at a residence, and is of a type and value customarily provided by the employee to personal friends.

You may give to an official superior or accept from subordinate employees and other employees receiving less pay than you–

- items given in connection with the receipt of personal hospitality (i.e., gifts of appreciation to a host or hostess) even if the cost of these customary gifts is in excess of \$10.

**Example:**

Your supervisor has invited you and your co-workers to a Hanukkah dinner at the supervisor's house. You would like to show your

appreciation by bringing a box of candy, a bouquet of flowers, or a basket of fruit worth about \$15. Can you do it? Can the supervisor accept?

**Yes.** Candy, flowers, and fruit of such value are examples of permissible gifts given in connection with the receipt of personal hospitality. Gifts in this category may exceed the \$10 maximum, provided they are of a type and value customarily given on such occasions.

### **Special, Infrequent Occasions:**

Certain gifts are permitted under limited exceptions for special, infrequent events, such as marriage, the birth or adoption of a child, illness, or retirement or other occasions that terminate the superior-subordinate relationship.

#### **Example:**

Your supervisor is in the hospital and you would like to send her a floral arrangement or planter. You are not limited to \$10.

Your colleague, who earns more money than you, just had twins. You may purchase a gift without regard to the \$10 limit, provided that the gift is of a type and value customarily given in connection with the occasion.

### **Voluntary Contributions:**

You may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior, and you may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior –

- on special, infrequent occasions of personal significance, such as marriage, the birth or adoption of a child, or illness.
- on an occasional basis, for items such as food or refreshments to be shared in the office among several employees.

#### **Example:**

The Deputy Division Director of your office was recently promoted to a new position in a different office. He will no longer be your supervisor. Before he leaves for the new position, your office would like to collect money for an appropriate gift – perhaps a leather briefcase. You may collect voluntary contributions of nominal amounts to recognize his promotion to a position outside of your supervisory chain because it terminates the superior-subordinate relationship. If the promotion did not terminate the superior-subordinate relationship, you could not solicit or make contributions for a gift. However, to mark the occasion, you could take up a collection to buy refreshments to be consumed by everyone in the office.

## **Section 4:** *Outside Employment and Activities*



# Outside Employment and Activities

## In General

Under the Standards of Ethical Conduct (Standards), you cannot engage in outside employment or other outside activities that conflict with your official duties. Such a conflict exists if the proposed activity is: (1) prohibited by statute or Treasury regulation; or (2) would require your disqualification under the conflict of interest statute (*see* section 1) or the impartiality rules (*see* section 2) from matters so central or critical to the performance of your official duties that your ability to perform those duties would be materially impaired.

### Example:

A contracting officer in Departmental Offices (DO) cannot be employed by a contractor with whom she regularly deals in the course of her official duties. Subject to approval, she may be able to engage in such activity with a contractor that does not do or seek to do business with DO.

## Prior Written Approval

You must obtain prior written approval before engaging in any outside employment or business activity, with or without compensation, except to the extent that your employing bureau (including the Legal Division) has issued an instruction or manual issuance exempting an activity or class of activities from this requirement. If prior written approval is required, it shall not be granted if it is determined that the proposed outside employment or activity is expected to involve conduct prohibited by statute, the Standards, or the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Supplemental Standards).

### Example:

In DO, most employees seeking approval of an outside employment or business activity must submit a signed copy of Form DOF-90.09, "Outside Employment or Business Activity Request," to their immediate supervisors before engaging in the proposed activity. However, under DO's rules, the following types of outside activities do not require written approval:

1. Membership and services (including holding of office) in civic, scout, religious, educational, fraternal, social, community, veterans, and charitable organizations, including corporations, where such office or services do not entail the management of a business-type activity such as the direct operation of a commercial-type clubhouse;

2. Membership and services (including holding of office) in Federal employee organizations, credit unions, and Federal employee unions, as otherwise permitted by law;
3. Services as a notary public;
4. Sales to co-workers, friends, relatives, and neighbors not involving sales to, or solicitation of, the general public, provided that such sales are not solicited or transacted during duty hours or in space occupied by Treasury offices, and are otherwise permitted by law;
5. Rental of personally-owned real or personal property, provided that the employee is not engaged in a commercial business venture; and
6. Minor services and odd jobs for friends, relatives, or neighbors.

*You should contact bureau ethics counsel or other ethics officials for additional information on the permissibility of an outside employment or other activity and the procedures for obtaining approval to engage in that outside employment or other activity.*

In the course of engaging in outside employment or other activities, you must be aware of, and comply with, applicable restrictions on the use of information gained from Government employment. **Generally, you may not use Government equipment, supplies, or time in connection with outside employment or other activities. With certain limited exceptions, you cannot use your official title, position, or authority associated with your office in performing outside employment or other activities.**

## **Bureau Restrictions on Outside Employment and Activities**

The Supplemental Standards prohibit certain outside employment or activities by employees of the Internal Revenue Service, the Office of the Comptroller of the Currency, and the Legal Division.

*If you are employed by one of these entities, please consult bureau ethics counsel or other ethics officials and/or the Supplemental Standards for more information.*

## **Outside Earned Income Limitations Applicable to Certain Political Appointees and Other Non-Career Employees**

Presidential appointees to full-time non-career positions listed in the Executive Schedule, and certain other employees appointed by the President to positions paid at level IV or V of the Executive Schedule, are prohibited from receiving any outside earned income for outside employment, or for any other outside activity.

Certain other non-career employees are prohibited from receiving outside earned income exceeding 15% of the annual rate of basic pay for level II of the Executive Schedule, which is currently \$23,715. These employees cannot receive any compensation related to the practice of a profession involving a fiduciary relationship, or for serving as an officer or board member of an association, corporation, or other entity.

The non-career employees subject to these latter restrictions are those occupying a position above GS-15 or, in the case of positions not under the General Schedule, those for which the rate of pay is at least 120% of the minimum rate of basic pay payable for a GS-15, which is currently \$104,927, *and* who are appointed to: a position that by statute or practice is filled by Presidential appointment; a non-career position in the Senior Executive Service; a Schedule C position; or a non-career executive assignment position.

### **Teaching, Speaking, and Writing**

An employee cannot accept compensation for teaching, speaking, or writing that relates to the employee's official duties. Such activities relate to the employee's official duties if, among other criteria:

- the invitation appears to have been extended because of the employee's official position rather than his expertise on the subject matter;
- the invitation was extended to the employee by a person who has interests that may be affected substantially by the performance or non-performance of the employee's official duties;
- the information to be conveyed draws substantially on ideas or official data that are nonpublic information; or
- the subject of the activity deals in significant part with: any matter to which the employee is assigned or has been assigned within the past year; any ongoing or announced Treasury policy, program, or operation; or, in the case of a non-career employee eligible to earn outside income, the general subject matter, industry, or economic sector primarily affected by Treasury's programs and operations.

There are limited exceptions to this rule. For example, certain compensated teaching activities at the college, secondary, or elementary school levels are permitted.

A non-career employee who is eligible to earn outside income must receive the advance approval of the Designated Agency Ethics Official before engaging in compensated teaching.

*An employee who wishes to engage in compensated teaching, speaking, or writing should contact bureau ethics counsel or other ethics officials before commencing the activity.*

## **Serving as an Expert Witness**

An employee cannot serve as an expert witness for anyone but the Government in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless authorized to do so by the Designated Agency Ethics Official.

## **Special Rules for Attorneys in the Legal Division**

Legal Division attorneys also are required to comply with General Counsel Directive (GCD) No. 6, “Outside Employment of Attorneys,” and GCD No. 16, “*Pro Bono* Legal and Volunteer Service Policy Statement.” Among other things, the Supplemental Standards and GCD No. 6 state that Legal Division attorneys are subject to the rules in the Supplemental Standards applicable to the bureau or office in which they serve. They cannot engage in the outside practice of law that might require the attorney to take a position that is or appears to be in conflict with Treasury’s interests or interpret any statute, regulation, or rule administered or issued by Treasury. Legal Division attorneys are encouraged to engage in *pro bono* activities in accordance with the guidelines described in GCD No. 16.

## **Representational Activities**

All employees are precluded by criminal statutes from representing others before the Government, with or without compensation, or from sharing in the proceeds of such representational activities. If not inconsistent with the faithful performance of an employee’s official duties, there are limited exceptions permitting the uncompensated representation before the Government of: a person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or a non-profit entity if a majority of the entity’s members are current Government employees, or their spouses or dependent children.

*Employees should contact bureau ethics counsel or other ethics officials before engaging in any such uncompensated representational activity.*

# **Representation of Persons Before Federal Agencies When Not a Part of Official Duties**

As a general rule, Federal employees may not, other than in the proper discharge of their official duties, represent anyone before a Federal agency or court regarding any matter in which the United States is a party or has a direct and substantial interest. Compliance with these statutes requires special care because they prohibit conduct that is not always intuitively improper.

**18 U.S.C. § 203** prescribes criminal penalties for anyone who directly or indirectly “demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another,” before the executive branch or a court in connection with any particular matter in which the United States is a party or has a direct and substantial interest, if any part of the representation occurs while that person is a Government employee.

While typically involving an attorney, the statutory bar and its resolution apply equally to non-attorneys who provide compensated representational services, such as consultants and experts in engineering, accounting, and similar professional fields. For example, an employee cannot accept compensation to represent, before a Federal agency, a non-profit organization, the majority of whose members are current Government employees, or their spouses or dependent children (*but see* the discussion below on uncompensated representation of such an entity). The employee could not receive the compensation even if someone else made the representations.

**18 U.S.C. § 205** prohibits a Federal employee from acting as agent or attorney for anyone other than the United States before the executive branch or a court, concerning any particular matter in which the United States is a party or has a direct and substantial interest. An employee also cannot act as agent or attorney for prosecuting any claim against the United States or receive compensation for behind the scenes assistance with regard to such a claim.

For example, under section 205, an employee of a department cannot, at the request of his son-in-law, call an official at another department and request that payment for a contract between the son-in-law and the other department be made promptly.

Section 205 does not prevent a Federal employee’s representation of himself before an agency or court. The implied exception in section 205 for self-representation does not extend to the representation of a distinct legal entity such as a corporation solely owned by the employee.

There are several potential exceptions to the prohibitions in section 205. If not inconsistent with the faithful performance of the employee's duties, an employee may act *without compensation* as agent or attorney for, or otherwise represent:

- (a) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or
- (b) a cooperative, voluntary, professional, recreational, or similar non-profit organization, in which a majority of the members are employees of the U.S. or the District of Columbia, or immediate family members of the employees.

Certain of these representational activities have been determined to be inconsistent with the faithful performance of an employee's official duties. For example, an attorney in the Legal Division cannot represent any other Treasury employee who is the subject of disciplinary or other personnel administration proceedings in connection with those proceedings.<sup>1</sup>

In addition, an employee may act, *with or without compensation*, as agent or attorney for, or otherwise represent, his parents, spouse, child, or any person for whom, or any estate for which, the employee is serving as guardian, executor, administrator or other fiduciary except:

- (a) in any matter in which he has participated personally and substantially as a Federal employee; or
- (b) in a matter which is the subject of his official responsibility.

The representation of a family member, as described above, is subject to approval by the Government official responsible for appointment of the employee to his position.

Employees should consult with bureau ethics counsel or other ethics officials before engaging in compensated or uncompensated representational activities before the Government.

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<sup>1</sup> Certain representational activities by an attorney acting in his or her capacity as a union representative are permissible.

**Section 5:**  
*Seeking and Negotiating  
for Future Employment  
and Post Employment  
Restrictions*

# Seeking and Negotiating for Future Employment

Treasury Department employees may seek and negotiate for employment outside the Government so long as they take appropriate steps to protect the integrity of the Department's decision-making processes. In most cases, this requirement can be met by disclosure to a supervisor and recusal.

## Disqualification Requirement

The major statutory restriction affecting all Federal employees with respect to prospective employment in the private sector is that an employee who is negotiating for, or has an arrangement concerning, prospective employment with a person or organization may not participate in any Government matter in which that person or organization has a financial interest. 18 U.S.C. § 208(a). This restriction has been extended by regulation to those employees who are merely seeking employment. 5 C.F.R. § 2635.601 (Standards of Ethical Conduct for Employees of the Executive Branch).

**Note:** An employee who is seeking or negotiating for employment with a person whose financial interests are not affected directly and predictably by particular matters in which he participates personally and substantially has no obligation to recuse under the statute or regulation. Moreover, an employee has not begun seeking employment if he has merely requested a job application. An employee may, however, be subject to other statutes which impose requirements on employment contact or discussions, such as 41 U.S.C. § 423(c), applicable to agency officials involved in certain procurement matters.

## When Does an Employee Begin to Seek or Negotiate for Employment?

An employee has a requirement to disqualify himself from participating in particular matters that would affect the financial interests of a prospective employer when the employee:

- **Is engaged in negotiations for employment** with the prospective employer;

*Note: "Negotiations" means discussion or communication with another person mutually conducted with a view toward reaching an agreement regarding possible employment with that person. "Negotiation" often occurs before discussion of specific terms or conditions of employment.*

- **Made an unsolicited communication** to the prospective employer regarding possible employment; or



- **Made a response other than rejection to an unsolicited communication from the prospective employer.** If you receive an inquiry about possible future employment and you do not want to be in a position to disqualify yourself from participation in particular matters that would affect the prospective employer's financial interests, you may respond to the inquiry by stating that you are not planning on leaving the Government, but if those circumstances change you will remember their expression of interest. However, a response that merely defers employment discussions until the foreseeable future does not constitute rejection. The distinction is subtle but important.

### **Limited Exception for Matters of General Applicability**

An employee has begun seeking employment when he makes any unsolicited communication to a prospective employer regarding possible employment. However, for purposes of determining whether an employee needs to disqualify himself from working on any particular matter that is in the nature of a general regulation or another assignment that similarly affects a firm only as part of an industry or other discrete class of persons, the employee is not yet "seeking employment" if he merely sends out one or more resumes, even though the matter affects the firm to which he has merely sent a resume. Under these circumstances, an employee will only be considered to have begun seeking employment upon receiving a response indicating interest in employment discussions.

### **Use of Headhunters or Other Intermediaries**

An employee who engages an agent to seek future employment on his behalf – or who approaches or is approached by an executive search firm – has not begun seeking employment with any person for the purpose of the statutory restrictions until the agent identifies a prospective employer to the employee. Where employment contacts or inquiries are made on behalf of an employee by a headhunter, or by any other intermediary of the employee, such as a friend or associate, the employee would be viewed as seeking employment when (1) the identity of the employee is made known to the prospective employer; and (2) the identity of the prospective employer is made known to the employee.

### **Covered Matters**

The statute does not forbid an employee from negotiating for other employment while he is still with the Government. It does, however, require that the employee disqualify himself from participation in any particular matter in which a prospective employer may have a financial interest. This personal participation prohibition applies not only to the formal approval or disapproval of action, but also to participation in the early stages of an action, such as making a recommendation or

participating in an investigation. Once an employee is seeking or negotiating for employment, matters in which he or she must refrain from participating include both specific matters (e.g., enforcement actions or contracts) and general matters (e.g., the review of a regulation affecting national banks), if such general matters focus on a discrete and identifiable class of persons and have a direct and predictable effect on the financial interests of a prospective employer.

## **Notification**

It is advisable for the employee to notify his or her supervisor of the employment discussions, when recusal is required, so that the Department may act to protect the integrity of its decision-making processes. Notice is similarly important so that supervisors may establish or alter personnel assignment patterns to minimize potential disruption of their missions. Giving notice to the Department also aids in protecting employees in the event of future allegations of impropriety.

## **Termination of Restrictions**

An employee is no longer seeking or negotiating for employment when either: (1) two months have elapsed after the employee sends an unsolicited job application and the employee has not received an expression of interest in employment discussions from the prospective employer; or (2) the employee or prospective employer rejects the possibility of employment and all discussions of possible employment have terminated.

An employee is considered to be seeking employment until two months have passed after sending an unsolicited resume (except, as noted above, for participating in particular matters of general applicability), provided that the employee has received no indication of interest in employment discussions with a prospective employer. A letter from a prospective employer merely acknowledging the receipt of a résumé or job application is not an indication of interest that would extend the two month period. If an employee is no longer seeking or negotiating for employment with a particular prospective employer, his need to recuse himself from matters affecting that prospective employer ends.

## **Acceptance of Employment**

An employee who reaches an arrangement concerning prospective employment must continue to recuse himself from matters affecting the financial interests of that prospective employer.

## **Travel Reimbursements -- Employment Interviews**

Advice from an ethics official should be sought before accepting travel reimbursements in connection with an employment interview. The acceptance of such reimbursements, which should not exceed the actual expenses incurred by the employee, is governed by section 2635.204(e)(3) of the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. § 2635.204(e)(3)).

Pursuant to that section, if the prospective employer has financial interests that may be affected by the performance of the employee's official duties, acceptance of travel reimbursement is permitted only if the employee has first disqualified himself from personal and substantial participation in any particular official matter that, to his knowledge, has a direct and predictable effect on the interests of the prospective employer.

While a disqualification from any particular matter concerning the prospective employer is usually sufficient to overcome the prohibitions, an ethics official's prior review will ensure that the acceptance of reimbursements is consistent with the regulatory requirements. Also, if the value of the reimbursement from a single source is \$285 or more, those who are required to file public financial disclosure statements (SF 278) will have to report the receipt of such reimbursement on Schedule B, Part II of the form.

## **Advice of Counsel**

The ethics officials in the General Counsel's office are available to assist in determining whether contact with a prospective employer is of such a nature that recusal is required. Within each bureau, the Chief Counsel is the appropriate official to contact. Senior officials should speak with the Assistant General Counsel for General Law & Ethics, or with the Senior Counsel for Ethics. In those situations where a conclusion is reached that the contact does not require disclosure, the conversation concerning that contact will remain confidential between the employee and counsel, unless information about the conversation is sought by an authorized investigator. If the contact with the prospective employer requires a disqualification, the counsel will so advise the employee. In that event, the employee should promptly take action to advise the appropriate supervisory official.

In view of the broad range of the Department's interests, officials appointed by the President must be particularly careful in negotiating for prospective employment. Prudential concerns, in addition to the legal requirements, dictate that such officials contact the Assistant General Counsel for General Law & Ethics or the Senior Counsel for Ethics either upon receipt of an employment offer that is not immediately turned aside or before beginning discussions for future employment outside the Government.

# Post-Employment Restrictions

Treasury employees are subject to certain restrictions regarding matters they can work on after they leave Government employment. Since these restrictions are complex and technical, and this is intended only as a summary, employees who need a more detailed description of these restrictions or who require specific advice concerning their applicability may contact the ethics counsel serving their bureaus.

## Restrictions Applying to All Former Employees

- **Permanent Representational Bar** – No former employee who personally and substantially participated in a particular matter involving a specific party or parties at any time during his Federal employment, may communicate with or appear before any Executive or Judicial branch employee on behalf of any other person concerning that same matter after leaving the Government. 18 U.S.C. § 207(a)(1).
- **Two-year Representational Bar** – For two years after leaving the Government, no former employee may communicate with or appear before any Executive or Judicial branch employee on behalf of any other person concerning a particular matter involving a particular party or parties which such person knows or reasonably should know was actually pending under his official responsibility during the last year of his Federal employment. 18 U.S.C. § 207(a)(2).
- **One-year Trade/Treaty Negotiation Bar** – For one year after leaving the Government, no former employee who personally and substantially participated in any ongoing trade or treaty negotiation within the last year of employment **and** who gained access to information that is exempt from disclosure under the Freedom of Information Act may represent, aid or advise anyone concerning the same ongoing trade or treaty negotiation on the basis of such information for one year after his employment terminates. 18 U.S.C. § 207(b).

**Definitions** -- As used in this summary, *“participate personally and substantially”* means involvement in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. To *“participate personally”* means directly, and includes the participation of a subordinate in a matter when actually directed by the employee. *“Substantially”* means that an employee’s involvement must be of significance to the matter, or form the basis for a reasonable appearance of such significance. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

The requirement of a particular matter involving a specific party or parties typically involves a specific proceeding involving the legal rights of the parties or an isolatable transaction, or related set of transactions, between identifiable parties. For the purposes of the restrictions in sections 207(a)(1) and (a)(2), rulemaking, legislation, and the formulation of general policy standards or objectives **are not** such “particular matters.” Therefore, with respect to both the permanent and two-year representational prohibitions noted above, a former employee may represent another person in connection with a particular matter involving a specific party, even if rules or policies which the employee had a role in establishing are involved in the proceeding.

### **Restrictions Applying to Senior Employees**

A senior employee is any Presidentially-appointed, Senate-confirmed individual or other official serving in a position listed on the Executive schedule (5 U.S.C. §§ 5313-5316) and any other employee in a position for which the basic rate of pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule (i.e., currently equal to or greater than \$136,757).

- **One-year Cooling-off Period** – For one year following service in a senior position, no former employee may communicate with or appear before any Treasury employee if that communication or appearance is made on behalf of any other person in connection with any matter concerning which the former employee seeks official action. 18 U.S.C. § 207(c). While in the case of former Presidential appointees this restriction applies to the entire Department, for non-Presidential appointees it is limited to their former employing bureaus.
- **One-year Foreign Entity Representation Bar** – For one year following service in a senior position, no former employee may represent a foreign entity (meaning a foreign government or political party) before any employee of the Executive branch or aid or advise a foreign entity with the intent to influence a decision of an employee of the Executive branch. 18 U.S.C. § 207(f).

### **Restrictions Applying to Very Senior Employees**

- **Additional Representational Restriction** – This restriction applies to any former employee who was employed in a position paid at the rate of pay for level I of the Executive Schedule, or employed in the Executive Office of the President at a rate of pay for level II of the Executive Schedule. (At Treasury, this restriction applies to the Secretary.) These individuals are barred for one year after termination of their service in such positions from knowingly making representational communications to (or

appearances before) certain Federal officials on behalf of any other person who seeks official action by any officer or employee of the executive branch in connection with any matter. Specifically, such former very senior employees are barred for one year from undertaking representational contact with any officer or employee of the department or agency in which they served within one year before the termination of their Federal service, and with any other persons occupying positions in the executive branch paid at the rates payable for levels I through V of the Executive Schedule. 18 U.S.C. § 207(d).

### **Additional Restrictions**

- **18 U.S.C. § 203** – Certain post-employment restrictions are contained in this statute which may apply to employees who anticipate joining a partnership after leaving Government service. This statute makes it unlawful for a former Federal employee to receive, agree to receive, solicit, or share in any compensation earned for services rendered by another before any Federal department or agency during the time that the former employee worked for the Government.

If, for example, an employee leaves Treasury and accepts a partner position in a law firm which has regularly represented clients before Federal agencies, suitable arrangements must be made to ensure that the former employee does not receive any compensation attributable to such representation provided by the firm while she was a Federal employee. In order to avoid this particular prohibition, payment of a salary generally for one year, instead of a grant of a usual partnership compensation arrangement, to the employee is advisable.

- **The “Procurement Integrity” Bar** – For one year after taking certain actions or serving in particular capacities in relation to the award or the administration of Treasury contracts or contract amendments in excess of \$10,000,000, former employees are barred from accepting compensation from the contractors concerned. Specific advice should be sought with regard to the application of this provision by those departing employees who have been involved in such significant Treasury contracting activities. 41 U.S.C. § 423(d).
- **Rules of Practice before the IRS and TTB** – Former Government employees practicing before the IRS and the Alcohol and Tobacco Tax and Trade Bureau (TTB) are subject to rules issued by the Treasury Department and published at Title 31, Code of Federal Regulations, part 10 (IRS) and part 8 (TTB). These rules in part 8, originally applicable to practice before the Bureau of Alcohol, Tobacco and Firearms, continue in effect for

former Government employees who practice before the TTB, pursuant to Treasury Order 120-01 as revised, 68 Federal Register 3583 (January 24, 2003). Consult these rules before practicing before the IRS and/or TTB, including any revisions that may be published in the Federal Register.

- **Attorneys** – Government employees who are attorneys may be subject to additional restrictions under their applicable state bar rules.

**Section 6:**  
*Political Activity and  
the Hatch Act*



## **Political Activity and the Hatch Act**

Attached is a set of three Do's and Don'ts Memoranda summarizing the prohibitions in the "Hatch Act." There are three sets of memoranda because the applicable law provides different rules for (1) Non-Career SES, Schedule C, and career civil service appointments; (2) Certain law enforcement, inspector general and other categories of employees including SES appointees; and (3) PAS appointees.

## **ATTACHMENT A**

### **Political Activity Guidelines for Most Federal Employees<sup>1</sup>**

The following list contains examples of both permissible and prohibited activities under the Hatch Act and Office of Personnel Management regulations for “covered employees.” Covered employees include all noncareer members of the Senior Executive Service and employees at level GS-15 or equivalent and below, except those employees in the Office of Criminal Investigation of the IRS.

#### **Permitted Activity**

As a covered employee you:

**May** register and vote as you choose

**May** be a candidate for public office in non-partisan elections

**May** express opinions about candidates and issues

**May** contribute money to political organizations

**May** assist in voter registration drives

**May** attend and speak at political fundraising functions, but may not make direct appeals for contributions of money for a political purpose

**May** permit use of your name (but NOT your title) on an invitation to a political fundraiser as long as such use does not suggest that you are soliciting or encouraging contributions

**May** organize or manage fundraising activities, including stuffing envelopes with requests for political contributions, so long as you do not personally solicit contributions, e.g., sign a fundraising letter

**May** solicit, accept, or receive uncompensated volunteer services from any individual, except a subordinate, to work on behalf of a partisan political candidate or organization

**May** attend and be active at political conventions, rallies and meetings

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<sup>1</sup> This guidance does NOT apply to career members of the Senior Executive Service, the Inspector General and the Inspector General for Tax Administration, and employees in the Office of Criminal Investigation of the IRS.

## **Prohibited Activity**

As a covered employee you:

**May not** use your official authority or influence to interfere with an election

**May not** solicit, accept or receive political contributions, even anonymously

**May not** engage in political activity

- in any room or building occupied in the discharge of official duties; by an individual employed by, or holding office in the Government of the United States;
- while wearing uniform or official insignia identifying your office or position; or
- while using any U.S. Government vehicle

**May not** knowingly solicit or discourage the political activity of any person who has business before the agency

**May not** engage in political activity while on duty

**May not** directly or indirectly promise any employment, contract, or other Federal benefit in return for political support for a particular candidate or party

**May not** directly or indirectly cause a person to make a political contribution by firing or threatening to fire an employee or by depriving or threatening to deprive any person of Federal employment or other Federal benefit

**May not** be a candidate for public office in a partisan election

## **ATTACHMENT B**

### **Political Activity Guidelines for Federal Employees Subject to the Greatest Restrictions**

The following list contains examples of both permissible and prohibited activities under the Hatch Act and Office of Personnel Management regulations for all career members of the Senior Executive Service, the Inspector General and the Inspector General for Tax Administration, and employees in the Office of Criminal Investigation of the IRS.

#### **Permitted Activity**

If you are a career member of the SES or otherwise a covered employee you:

**May** register and vote as you choose

**May** be a candidate for public office in non-partisan elections

**May** express opinions about candidates and issues

**May** contribute money to political organizations

**May** sign nominating petitions

**May** assist in voter registration drives

**May** attend as a spectator, but not organize, sponsor, or promote, a political convention, rally, fundraising function, or other political gathering while off duty

**May** be politically active in connection with a question which is not specifically identified with a political party, e.g., a constitutional amendment, referendum question or municipal ordinance, while off duty

#### **Prohibited Activity**

If you are a career member of the SES or otherwise a covered employee you:

**May not** use your official authority or influence to interfere with an election

**May not** solicit, accept or receive political contributions, even anonymously

**May not** knowingly solicit or discourage the political activity of any person who has business before the agency

**May not** take an active part in partisan political management or in a partisan political campaign

**May not** organize, sell tickets to, or actively participate in a fundraising activity of a candidate for partisan political office, or of a political party or partisan group

**May not** hold office in a political club or party

**May not** directly or indirectly promise any employment, contract, or other Federal benefit in return for political support for a particular candidate or party

**May not** directly or indirectly cause a person to make a political contribution by firing or threatening to fire an employee or by depriving or threatening to deprive any person of Federal employment or other Federal benefit

**May not** be a candidate for public office in a partisan election

**May not** campaign for or against a candidate (or slate of candidates) in partisan elections

**May not** make campaign speeches

**May not** distribute campaign material in partisan elections

**May not** organize or manage political rallies or meetings

**May not** circulate nominating petitions

**May not** work to register voters for one party only

## **ATTACHMENT C**

### **Political Activity Guidelines for Presidential Appointees**

The following list contains examples of both permissible and prohibited activities under the Hatch Act and Office of Personnel Management regulations for those appointed to their positions by the President, by and with the advice and consent of the Senate (PAS).

#### **Permitted Activity**

As a PAS you:

**May** register and vote as you choose

**May** be a candidate for public office in non-partisan elections

**May** express opinions about candidates and issues

**May** contribute money to political organizations

**May** sign nominating petitions

**May** assist in voter registration drives

**May** attend and speak at political fundraising functions, but may not make direct appeals for contributions of money for a political purpose

**May** be politically active in connection with a question which is not specifically identified with a political party, e.g., a constitutional amendment, referendum question or municipal ordinance, while off duty

**May** permit use of your name, including references in the form of "The Honorable" (but NOT your title) on an invitation to a political fundraiser as long as such use does not suggest that you are soliciting or encouraging contributions

**May** organize or manage fundraising activities, including stuffing envelopes with requests for political contributions, so long as you do not personally solicit contributions, e.g., sign a fundraising letter

**May** solicit, accept, or receive uncompensated volunteer services from any individual, except a subordinate, to work on behalf of a partisan political candidate or organization

**May** attend and be active at political conventions, rallies and meetings

**May** join and be an active member of a political party or club

**May** campaign for or against referendum questions, constitutional amendments and municipal ordinances

**May** make campaign speeches for candidates in partisan elections

**May** hold office in political clubs or parties

### **Prohibited Activity**

As a PAS you:

**May not** use your official authority or influence to interfere with an election

**May not** solicit, accept or receive political contributions, even anonymously

**May not** engage in political activity

- in any room or building occupied in the discharge of official duties;
- while wearing a uniform or official insignia identifying your office purpose or position; or
- while using any U.S. Government vehicle,
- *unless the costs associated with the political activity are not paid for by money derived from the Treasury of the United States. However, reimbursement from a political sponsor is not required for special security arrangements for the person engaging in the political activity, including transportation vehicles.*

**May not** knowingly solicit or discourage the political activity of any person who has business before the agency

**May not** directly or indirectly promise any employment, contract, or other Federal benefit in return for political support for a particular candidate or party

**May not** directly or indirectly cause a person to make a political contribution by firing or threatening to fire an employee or by depriving or threatening to deprive any person of Federal employment or other Federal benefit

**May not** be a candidate for public office in a partisan election

**Section 7:**  
*Financial Disclosure and Annual  
Ethics Training Requirements*



# **Financial Disclosure and Annual Ethics Training Requirements**

Employees who are required to file either a public or a confidential financial disclosure report, as discussed below, will receive the appropriate form from their Personnel Office or Office of Human Resources as part of their orientation materials.

Your completed report enables Departmental officials to identify whether your financial or other interests create any real or apparent conflict of interest with your official Treasury duties and your personal financial interests and any outside activities and employment and/or other affiliations. Ultimately, it is your responsibility to ensure compliance with all ethics laws and regulations.

## **Public Financial Disclosure Filing**

Under the Ethics in Government Act, senior officials and certain employees in confidential positions (i.e., PAS, SES, and Schedule C employees) must file new entrant, annual, and termination public financial disclosure reports (SF 278).

- New entrant reports are due within 30 days of your appointment to a covered position.
- Annual reports are due by May 15 of each year.
- Termination reports are due on or within 30 days after departure from your covered position, unless you are transferring to another covered position at an executive branch agency within 30 days. In this case no termination report is required.

All reports must be received by the due date in order to be considered filed.

Timeliness of filing is important because of a statutory \$200 late filing fee that applies to reports filed late.

Reports should be submitted to your bureau ethics counsel or other ethics official.

Filers who wish to complete the report online should check with their bureau or other ethics official for the website address.

Completing the report online allows you to save your data and update it each year; however, you must still print out and sign your report and send it to the Senior Counsel for Ethics for final submission. It is important that you retain a copy of your completed report for your records, not only to aid you in preparation of future reports, but also in the event questions arise regarding your current and future assignments.

## **Confidential Financial Disclosure Filing**

Even if you are not required to file a public report, you may be required to file a confidential financial disclosure report (OGE Form 450), based on your position duties and responsibilities. This determination is made pursuant to the standards set forth in Government-wide regulations issued by the Office of Government Ethics (OGE).

- Your new entrant OGE Form 450 is due within 30 days of entering the position for which you are required to file.
- Subsequent reports will be due October 31 of each year, as long as you are serving in a designated filing position.

Filers who wish to complete the report online should check with their bureau or other ethics official for the website address.

Completing the form electronically will allow you to save the form and update it for the purpose of completing future reports.

For DO employees, upon completion of your OGE Form 450, please sign it and submit it to your supervisor for review and signature. The information on the form will be reviewed promptly; if no further action is required, the report should be returned to the Senior Counsel for Ethics for storage in secure files. Bureau filers should check with their bureau ethics officials for procedural filing guidance.

It is important that you retain a copy of your completed report for your records, not only to aid you in preparation of future reports, but also in the event questions arise regarding your current and future assignments.

Administrative action can be taken against employees who do not comply with the confidential filing requirements.

## **Ethics Training**

All new Treasury employees receive an ethics briefing as part of the new employee orientation process. At that orientation, they should receive a copy of the Treasury Ethics Handbook with a contact list of ethics officials. New employees are permitted one hour of official duty time to review the Standards of Conduct and any related ethics materials, including the Treasury Ethics website at: <http://intranet.treas.gov>.

Presidential and Schedule C appointees will receive an in-person ethics briefing with the Designated Agency Ethics Official and/or the Alternate Designated Agency Ethics Official shortly after entering their positions. This briefing covers the Standards of Conduct, the criminal conflict of interest statutes, political activity, travel, and other ethics issues.

In addition to the new employee briefing, public and confidential financial disclosure filers must, by Government ethics regulations, receive annual ethics training. Public filers are required to receive in-person training annually, while confidential filers are required to receive written training annually and an in-person briefing in lieu of the written requirement every three years.

You will be notified by the Office of the General Counsel or by your bureau ethics counsel if and when you are required to participate in ethics training.

If you have any questions about ethics matters, please contact your bureau ethics official.

**Section 8:**  
*Speaking*  
*Engagements*

## **Invitations to Speak at Certain Events**

Many of you regularly receive invitations to participate as speakers or panelists to discuss official Treasury matters at conferences, meetings or similar events hosted by private sector organizations. Generally, acceptance of these invitations serves the interests of the Department and therefore is unobjectionable from the standpoint of the ethics rules found in the Governmentwide standards of conduct. However, there are exceptions discussed below. Also, attendance at these events, if they take place out of town, often give rise to travel issues. For guidance on travel, see section 9 of the Handbook.

Invitations to speak before small, closed meetings hosted by firms or companies solely for the benefit of their employees, clients or customers present more difficult questions. Accepting such an invitation may create an appearance that an official is permitting the use of his public office for the gain of a private organization or that the official is giving preferential treatment to a private organization. In many instances, firms seek our senior officials as speakers at these so-called “client events” in order to demonstrate to their customers, and often to their potential customers, the Washington influence which the firms ostensibly enjoy.

However, acceptance of an invitation to such an event is appropriate if it is clear that the official’s participation in such a closed event will serve a significant Departmental interest. One example of such an interest is the need of the Department to advise those in attendance of Treasury views on an important subject when the attendees cannot practically be reached by other means. Also, the “preferential treatment” issue is averted if the official is willing to meet with any and all such similarly situated private groups.

Prudence suggests that you seek advice of an ethics official with respect to “client events” on a case-by-case basis. Questions concerning such invitations may be addressed to the Office of the Assistant General Counsel for General Law and Ethics or your bureau ethics official.

## **Section 9:** *Travel*

# Ten Travel Don'ts

This guidance highlights many of the specialized rules regarding Federal travel. Any questions that you have should be addressed to the Office of the Assistant General Counsel for General Law & Ethics (GLE) or your bureau ethics official. We will try to answer your questions quickly, but our flexibility to identify solutions is much greater if we are consulted well in advance.

Ten common sources of problems are listed below. While many of these rules have exceptions, they tend to be narrow and often require advance guidance.

1. You may not use Government funds to pay the costs of personal travel.

This is not to say that personal time cannot be taken at a location to which you've traveled for official business purposes; rather we want to point out that you need advice if you plan to do so. You should exercise special care when contemplating official trips to your home town; such trips sometimes risk appearing to be motivated more by personal reasons than official business needs.

2. Generally, the Government cannot pay for first class airfare.

3. Generally, you may not accept in-kind travel benefits (e.g., free airfare or lodging) or travel reimbursement from those who have interests in issues before the Department.

**Note:**

*Treasury may be able to accept such benefits for official travel, but DO employees must request advance approval from the Director, Office of Financial Management. Such benefits may not be accepted for personal travel.*

4. The Government cannot pay for the expenses of travel for partisan political purposes.

Where a trip will involve both official and political activities, the expenses must be allocated between the Government and a political sponsor or yourself following rules set by White House Counsel. The travel office and GLE will help you with such trips, but the arrangements must be made before the trip takes place.

5. The Government may not pay the expenses of your spouse accompanying you on official travel unless he or she is performing official Government business.

6. Except when accommodations on American flag airlines are not reasonably available, you may not fly on official business on foreign flag carriers.

Also, unless certain exceptions apply, you must use Government contract fares for official travel. Rely on the travel office to arrange all travel to ensure you avoid problems in this area.

7. You may not use a Government-issued credit card to charge personal, non-reimbursable expenses.

8. You may not take advantage of Government contract rate airfares for personal travel.

9. Generally, you may not be reimbursed for lodging or for meals and incidental expenses in amounts greater than the maximum per diem rates established for the location to which you travel.

However, Treasury can authorize somewhat higher limits if expenses are unusually high due to special or unusual circumstances. In DO, if appropriate, travelers should request that the travel office obtain advance determinations that such circumstances exist and authorization of an appropriately higher limit.

10. You may retain for your personal use promotional items, including frequent flyer miles, earned on official travel. However, any associated costs are to be paid by the traveler, and are not a reimbursable expense.



# **Rules Governing Acceptance of Travel Reimbursement from Non-Federal Sources**

## **Summary:**

Many of you will have occasion to use the procedures for accepting reimbursement (in cash or in kind), from sources outside the Federal government, for the expenses of your official travel. Three distinct legal authorities allow for accepting such reimbursements. These authorities provide the exclusive means for the acceptance of reimbursements from outside, non-Federal sources for the official travel of Federal employees. Improved understanding of the procedures and substantive requirements for using each of these authorities will reduce your frustration and make more efficient the processing of your travel authorizations. To that end, we hope that you will make this guidance familiar to the individuals in your organization who arrange travel or who are frequently invited by private businesses, groups or associations to travel to meetings, conferences or similar events at the expense of those entities.

## **Discussion:**

The three statutory authorities which allow the acceptance of travel reimbursements from non-Federal sources for official travel of employees are listed below. The procedures for using each of these authorities are set forth in separate attachments to this memorandum.

### **The three authorities are:**

1. Section 302 of the Ethics Reform Act of 1989 (now codified at 31 U.S.C. § 1353) authorizes the agency to accept travel payments from a much broader range of non-Federal entities than may be accepted under the Training Act. See **Attachment A** entitled "*Acceptance of Travel Payments by Agencies from Non-Federal Sources for Certain Kinds of Employee Travel*" with "*Sample Request for Authorization to Accept Reimbursement.*"
2. The Training Act (5 U.S.C. § 4111) authorizes the acceptance of travel payments from certain tax-exempt (501(c)(3)) organizations as well as state and local governmental entities. See **Attachment B** entitled "*Acceptance of Travel Payments from Certain Tax-Exempt (501(c)(3)) and Governmental Organizations.*"
3. The Foreign Gifts and Decorations Act (5 U.S.C. § 7342) authorizes employees to accept gifts of travel or expenses of travel taking place entirely outside the United States. See **Attachment C** entitled "*Acceptance of Travel Payments under the Foreign Gifts and Decorations Act.*"

**ATTACHMENT A**  
**Acceptance of Travel Payments by Agencies from Non-Federal  
Sources for Certain Kinds of Employee Travel**

**31 U.S.C. § 1353 and 41 C.F.R. Part 304-1**

This authority permits **agencies to accept** payments for travel and subsistence expenses of their employees from a far broader range of non-Federal sources (but also permits acceptance from 501(c)(3) organizations and certain governmental organizations or entities). Treasury's procedures for accepting travel and subsistence payments under this authority are set forth in Treasury Directive 12-24. Travel under this authority is limited to that connected with the attendance of employees at meetings, conferences or similar events relating to their official duties.

**Procedures:**

1. Under this authority, all requests by employees for the acceptance of travel and subsistence payments from non-Federal sources **must be made and approved in advance of the travel**. In Departmental Offices, the traveler's request for the Department to accept the reimbursement is made in a memorandum addressed to the Director, Office of Financial Management. The Travel Office coordinates all such requests with the Office of the Assistant General Counsel for General Law and Ethics. A sample memorandum requesting such approval, which must be initiated by the traveling employee, is included in this section as **Attachment D**.
2. A completed Travel Authorization (TA) form must accompany all requests.
3. All memoranda making such requests must include the following information:
  - The employee's identity, position and title;
  - The identity and a brief description of the donor of the travel payments;
  - As appropriate, an indication of a supervisor's concurrence in the employee's attendance at the event;
  - The name and a brief description of the meeting or similar function to which the traveler has been invited. If applicable, a description of the role to be played by the employee at the event (as a speaker or panel member, for example) should be included.
  - The approximate amount of the travel and subsistence reimbursement involved;
  - A statement describing the benefit to the Department which will result from the employee's attendance at the event.

4. Payment from a non-Federal source **shall not be accepted** if the agency determines that acceptance under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. In making this determination, the nature and sensitivity of any matter pending before the Treasury which affects the interests of the non-Federal source shall be taken into consideration together with the significance of the employee's role in any such matter.

5. Once acceptance of reimbursement is approved, an employee may accept "payments-in-kind" (lodging, meals, or airline tickets, for example) from the non-Federal source, but may not accept cash directly. In the event that there is direct payment made by the non-Federal source to the employee, it must be in the form of a check, or similar instrument, made payable to the Department. Once such payment is received by the traveler, it is accepted on behalf of the Department and must be surrendered to the Treasury upon return from the travel.

### **Considerations:**

1. Payments may be received with regard to employee travel and subsistence in connection with their attendance (accompanied by their spouses under certain conditions) at meetings, conferences and similar events which the individuals have been authorized to attend in their official capacities.

2. Under this authority, the Department, rather than the employee, receives the payments from the non-Federal source. Such Departmental acceptance **must be approved in advance of the travel** by the Director, Office of Financial Management.

3. If the offer of payment includes spousal travel, the traveler must convincingly demonstrate in the request that the spouse's presence at the meeting or similar function will:

- support the agency's mission or will substantially assist the traveling employee in the performance of his or her duties;
- be for the purpose of attending a ceremony where the employee will receive an award or honorary degree; or
- be for the purpose of participation in substantive programs related to the agency's missions or operations.

A supervisor's concurrence in the prospective traveler's assertions in support of spousal attendance may be required in particular cases.

**ATTACHMENT B**  
**Acceptance of Travel Payments from Certain Tax-Exempt**  
**(501(c)(3)) and Governmental Organizations**

**5 U.S.C. § 4111 and 5 C.F.R. Part 410**

This authority requires advance approval of the acceptance of such payments by a designated agency official. Using the procedures outlined below, **employees may personally accept** travel payments from organizations holding a tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) or from state, local or municipal governmental organizations.

**Procedures:**

The applicable instructions (see page 10 of the Departmental Offices Travel Manual) require the traveler to submit the following materials to the Travel Office:

- A properly completed Travel Authorization (TA), including the official name of the 501(c)(3) organization or the identity of the state, local or municipal organization involved);
- A copy of the sponsoring organization's tax-exempt certificate if it claims a 501(c)(3) status;
- A copy of the letter of invitation, (or if not available, the traveler must insert a brief description of the invitation and the purpose of the trip in section 5 of the TA).

**Considerations:**

Travel under this authority will be approved by an agency if the designated agency official is satisfied that:

- The payment or contribution is not a reward for services rendered by the employee to the sponsoring organization prior to the meeting;
- Acceptance of the payment by the employee under the circumstances would not raise a real or apparent conflict of interest between the employee's performance of official duties and the objectives and programs of the sponsoring organization.

Payments accepted pursuant to the authority of section 4111 are deemed to be received directly by the employee. Therefore, employees required to submit public financial disclosure reports (SF 278) must usually report payments in excess of \$285 received during the reporting period from a single source under this authority on Schedule B, Part II. Employees required to submit confidential financial disclosure reports (OGE Form 450) must list such information in Part V. Contact an ethics official for further guidance.

**ATTACHMENT C**  
**Acceptance of Travel Payments under the**  
**Foreign Gifts and Decorations Act**

**5 U.S.C. § 7342 and 22 C.F.R. Part 3**

This authority may only be used when travel is to take place **entirely** outside the United States and not for travel originating or terminating in this country. Under this statute, an employee, **with the approval of the Department**, may accept gifts of travel and subsistence expenses for travel (including transportation, food and lodging) from a foreign governmental authority, including any foreign national, state, local or municipal government, if such acceptance is consistent with the interests of the United States, and approved by the Department. Travel payments under this authority may also be accepted from any international or multinational organization the membership of which is composed of foreign governments or units of foreign governments. Similarly, spousal and dependent travel payments may be accepted under this authority.

**Threshold Requirements:**

An employee may accept gifts of travel or expenses under two circumstances:

1. When the employee is issued official travel orders that effectively place him or her in the position where an opportunity may arise for the acceptance of travel or travel expenses offered by a foreign government, which are directly related to the authorized purpose of the travel; or
2. When the employee's travel orders specifically anticipate the acceptance of additional travel and travel expenses incident to authorized travel.

**Procedures:**

When the employee is traveling under circumstances outlined in number one above, without specific authorization to accept additional travel expenses from a foreign government, upon return to his or her post of duty, the employee must file a report of any such receipt with his or her employing organization's travel office. This report must include the following information:

- The name and position of the employee;
- A brief description of the gift and the circumstances justifying its acceptance; and
- The name of the foreign government and the name and position of the individual who presented the gift.

Expenses for travel entirely outside the United States that are accepted under 5 U.S.C. § 7342 from a foreign government do not have to be reported on the SF 278 or the OGE Form 450, since these are not a gift for purposes of 5 C.F.R. § 2634.105(h)(3). These gifts of travel will still have to be reported in accordance with 22 C.F.R. Part 3.

## ATTACHMENT D

### Sample Request for Authorization to Accept Reimbursement

MEMORANDUM FOR      DIRECTOR  
                                 OFFICE OF FINANCIAL MANAGEMENT

THROUGH:              KENNETH R. SCHMALZBACH  
                                 ASSISTANT GENERAL COUNSEL  
                                 (GENERAL LAW AND ETHICS)

FROM:                   lama Traveler

SUBJECT:                Acceptance of Travel Expenses

#### ACTION FORCING EVENT:

I have been invited to be the keynote speaker at the **[name of conference/event]** to be held on **[date]**, in **[city and state]**. The **[sponsor or other entity]**, has offered to reimburse the Department for my travel expenses -- including meals, lodging, and airfare (Estimated Cost: \$700 airfare; \$300 lodging **[Itemize expenses to extent known.]**) for a total cost of \$1,000.

#### RECOMMENDATION:

That you approve acceptance by the Department of the proposed reimbursement by **[sponsor or other entity]** of the meals, lodging, and transportation costs incurred incident to my participation in the **[name of conference/event]**, pursuant to 31 U.S.C. § 1353, 41 C.F.R. Part 304.1 and Treasury Directive 12-24:

\_\_\_\_\_ Approve \_\_\_\_\_ Disapprove \_\_\_\_\_ Let's Discuss

#### BACKGROUND:

The **[sponsor or other entity]** is a non-profit, educational organization whose primary purpose is to devise programs designed to provide training to professional economists. This conference is held annually and is intended to provide attendees with information on recent developments and trends in economics. The conference generally draws approximately 500 attendees from the business, academic, and government communities.

I have been invited to speak on **[subject]**. As **[position title in office name]**, my participation in this conference is related to my official duties. Moreover, my attendance will provide the Department with an opportunity to present the Department's views on economic issues. To the best of my knowledge, the **[sponsor or other entity]** has no interests pending before the Department in which I am now, or am likely to be, involved.

**Section 10:**  
*Lobbying Restrictions*



## **Lobbying with Appropriated Funds -- Statutory Restrictions**

There are two general types of lobbying -- direct and indirect. Direct lobbying involves direct contact with legislators by Federal officials, either in person or by means of oral or written communications. Indirect or "grass roots" lobbying involves appeals by Federal officials addressed to members of the public suggesting that they contact their elected representatives to indicate support of or opposition to pending legislation, or to urge their representatives to vote in a particular manner. Generally, "grass roots appeals" of this type are prohibited.

Restrictions on lobbying by Treasury Department officials stem from three sources. These are a criminal statute found at 18 U.S.C. § 1913 (the "Anti-Lobbying Act") and two provisions that regularly appear in the Treasury's annual appropriations acts. The criminal statute has never been construed as broadly as its language might read. For example, section 1913 prohibits spending any appropriated funds for a communication "intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress . . . " with exceptions for certain communications requested by a Member of Congress. Nevertheless, Department of Justice interpretations make clear that Federal officials are not barred from directly communicating with Members, even without a Member's request, in support of or opposition to legislation.

As noted above, the other statutory sources of lobbying restrictions are regularly found in sections of the Treasury and General Government Appropriations Act for each year. For example, these restrictions appear in sections 623 and 626 of the Treasury and General Government Appropriations Act, 2003. Section 623 provides:

No part of any funds appropriated in this or any other Act shall be used by an agency of the Executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

Section 626, which applies to all government agencies, provides:

No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

The Comptroller General consistently has construed these provisions to bar appeals to the public to urge Congress to favor or oppose legislation, but not to interfere with direct Executive agency communications to Congress for that purpose.

The difficulty is where to draw the line between the Department's clear responsibility to inform the public as to proposed legislation and the right of Congress to control the use of public funds to influence legislation. Generally, that line is crossed where efforts by an administration to inform the public about legislation become explicit encouragement to the public to contact Congress in support of or in opposition to specific legislation under consideration.

To avoid crossing this line, the following limitations should be observed by Treasury officials:

1. Groups with whom Departmental officials meet should not be solicited to conduct letter writing or similar campaigns to communicate with members of Congress;
2. Departmental officials should not organize, directly or indirectly, private groups to lobby for or against proposed legislation;
3. Departmental officials should not engage in letter writing, telephone or telefax campaigns urging the recipients to write their Congressmen or Senators on behalf of, or against, specific legislation;
4. Departmental releases should focus on discussing the merits or disadvantages of particular legislation and should avoid discussing contacts with Congress.

In practice, you will find that drawing this line requires a considerable exercise of judgment. Counsel's judgments on these issues may be one step removed from the pressures of program advocacy and therefore can provide some protection. We encourage you to seek the advice of ethics counsel when you face difficult questions in this area.

**Section 11:**  
*Special Government  
Employees*

# Special Government Employees and Conflicts of Interest

Members of Federal advisory committees and part-time experts and consultants to the Department of the Treasury often have substantial outside activities and financial interests, which may raise ethics issues. Persons serving in these positions are likely to be considered “special Government employees” (SGEs) to whom specified ethics statutes and regulations apply, without regard to the SGE’s pay status.

## Definition of Special Government Employee

An SGE is defined in 18 U.S.C. § 202(a) as “an officer or employee ... who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

The determination of whether an employee is an SGE is made prospectively, at the time the individual is appointed or retained.<sup>1</sup> Some advisory committee members who are expressly chosen to represent the views of certain groups are not considered SGEs and will be subject to fewer requirements than set out below.

## Financial Disclosure Reports

As a general rule, all SGEs must file either a new entrant public financial disclosure report (SF 278) or a confidential financial disclosure report (OGE Form 450) no later than 30 days after assuming their office or position. The determination of whether an SGE must file a public financial disclosure report or a confidential financial disclosure report is made by the agency ethics official based on the number of days the SGE is expected to serve in a calendar year and on the amount of compensation he is expected to receive.<sup>2</sup> Generally, any SGE not required to file a public financial disclosure report must file a confidential financial disclosure report. If an SGE is required to file a public report, he must also file subsequent annual reports and a termination SF 278 within 30 days of termination of his position, unless otherwise notified.

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<sup>1</sup> If the agency designates an employee as an SGE, based on a good faith estimate, but the employee unexpectedly serves more than 130 days during the ensuing 365-day period, the individual will still be deemed an SGE for the remainder of that period. However, upon the commencement of the next 365-day period, the agency will need to reevaluate whether the employee is correctly designated as an SGE based on the expected number of days he or she will serve.

<sup>2</sup> SGEs are required to file a public financial disclosure report if they are expected to perform those duties for more than 60 days and are paid an amount at least equal to 120% of the minimum rate of basic pay for GS-15 of the General Schedule.

## Financial Conflicts of Interest

Because SGEs typically have substantial outside employment and other interests, which are often related to the subject areas for which the Government desires their services, issues under 18 U.S.C. § 208 frequently arise. Section 208 prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others with whom they have certain relationships. In addition to an employee's own personal financial interests, the financial interests of the following persons or organizations are also disqualifying: spouse; minor child; general partner; organization which the individual serves as officer, director, trustee, general partner, or employee; and a person or organization with which the employee is negotiating or has any arrangement concerning prospective employment.

The scope of this prohibition and the regulatory exemptions that apply to de minimis holdings in publicly traded securities are discussed in detail in the *Treasury Ethics Memoranda* on “Financial Conflicts of Interest” and “Regulatory Exemptions.” In addition, a regulatory exemption permits an SGE serving on an advisory committee to participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. *See* 5 C.F.R. § 2640.203(g). However, this exemption does not include the interests of an SGE arising from the ownership of stock in his employer or prospective employer.

## Outside Activities

Generally, an appointment to a part-time Federal position does not require an SGE to alter his employment or other affiliations. However, certain outside activities during Federal service are limited:

- SGEs are prohibited from being or acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act. *See* 18 U.S.C. § 219.
- SGEs are prohibited from accepting any gift, office, title, or emolument, including salary or compensation, from a foreign government. *See* Emoluments Clause of the United States Constitution, U.S. Const., art. I, § 9, cl. 8
- As to any particular matter involving specific parties in which an SGE has been personally and substantially involved in the course of Government work, he may not:

- Solicit or receive pay for representational services on that same matter before any agency on behalf of a party other than the United States (18 U.S.C. § 203);<sup>3</sup> or
- Act as agent or attorney (except in the course of one's Government duties) in that matter (18 U.S.C. § 205).

If an SGE works for more than 60 days in any 365 consecutive day period, these restrictions also cover all particular matters involving specific parties that are pending before the agency, even if the SGE's Government work does not involve these matters.

## **Standards of Ethical Conduct for Employees of the Executive Branch**

Generally, SGEs are treated the same as regular employees under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. A copy of the Standards of Ethical Conduct for Employees of the Executive Branch will be provided to SGEs upon appointment.

Generally, the Standards require that the employee:

- Refrain from using or appearing to use public office for private gain;
- Not use any inside information obtained as a result of one's Government service for private gain;
- Accept or solicit gifts or anything of value (subject to certain exceptions) from persons having business with the agency or that are given because of one's official position; and
- Avoid situations creating an appearance of a conflict of interest.

## **Political Activity**

Restrictions govern political activities of SGEs during the actual time that they are engaged in official agency business. At other times, the Hatch Act restrictions do not apply. Generally, the Hatch Act, as amended, prohibits:

- (1) using one's official position to influence an election;
- (2) soliciting, accepting, or receiving a political contribution (of money or personal services); and
- (3) engaging in partisan political activities while on duty or in a Federal workplace.

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<sup>3</sup> These restrictions also prohibit an SGE from accepting a share of fees from representations made by others.

## Post-Employment Restrictions

The criminal post-employment statute, 18 U.S.C. § 207, imposes a number of different restrictions on the activities of former Government employees, which apply equally to former SGEs. 18 U.S.C. § 207(a)(1) imposes a lifetime prohibition on representing others in connection with the same particular matter involving specific parties in which the former employee participated personally and substantially. Section 207(a)(2) imposes a two-year prohibition on representing others in connection with the same particular matter involving specific parties that was pending under the employee's official responsibility during the last year of Government employment. Employees who were personally and substantially involved in a trade or treaty negotiation within the year before leaving Federal service are prohibited for one year from aiding or advising on the basis of specified non-public information about the negotiation. *See* 18 U.S.C. § 207(b).

Additional post-employment restrictions apply if the SGE serves as a "senior employee" and worked more than 60 days in the last year of Federal service.<sup>4</sup> These restrictions are:

- (1) a one-year cooling off period on representing anyone before his former agency or department in any matter regardless of the employee's prior involvement in the matter; and
- (2) a one-year prohibition on representing, aiding or advising a foreign government or foreign political party in connection with any official decision of an officer or employee of the United States.

If you have any questions regarding the applications of these rules, please consult with a Treasury ethics official.

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<sup>4</sup> A "senior employee" is any employee in a position for which the rate of pay is fixed according to the Executive Schedule; in a position for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule (i.e., currently equal to or greater than \$136,757); appointed to a position by the President under the authority of 3 U.S.C. § 105(a)(2)(B) or by the Vice President under the authority of 3 U.S.C. § 106(a)(1)(B); or in a position held by a commissioned officer of the uniformed services serving at pay grade 0-7 or above.

**Section 12:**  
*Ethics Resources*



# **Appendix A**

## *Executive Order 12731*

# **Executive Order 12731**

## **October 17, 1990 (in part)**

### **“PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES”**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered that Executive Order 12674 of April 12, 1989, is henceforth modified to read as follows:

#### **Part 1 -- PRINCIPLES OF ETHICAL CONDUCT**

“Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee’s agency, or whose interests may be substantially affected by the performance or nonperformance of the employee’s duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

**Sec. 102. Limitations on Outside Earned Income.**

- (a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.
- (b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

## **Appendix B**

### *Standards of Ethical Conduct*

# Standards of Ethical Conduct for Employees of the Executive Branch



October 2002

# **STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH**

**Final Regulation Issued by  
the U.S. Office of Government Ethics**

**Codified in 5 C.F.R. Part 2635 (1/1/02 Edition),  
as amended at 67 FR 61761-61762 (Oct. 2, 2002)**

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**PART 2635 - STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES  
OF THE EXECUTIVE BRANCH**

**SUBPART A - GENERAL PROVISIONS**

**§ 2635.101 Basic obligation of public service.**

- (a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.
- (b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.
  - (1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
  - (2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
  - (3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
  - (4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
  - (5) Employees shall put forth honest effort in the performance of their duties.
  - (6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
  - (7) Employees shall not use public office for private gain.

- (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
  - (9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
  - (10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
  - (11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
  - (12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.
  - (13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
  - (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.
- (c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

## **§ 2635.102 Definitions.**

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

- (a) *Agency* means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.
- (b) *Agency designee* refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.
- (c) *Agency ethics official* refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in § 2638.202(b) of this chapter, and to any deputy ethics official, described in § 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.
- (d) *Agency programs or operations* refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.
- (e) *Corrective action* includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.
- (f) *Designated agency ethics official* refers to the official designated under § 2638.201 of this chapter.
- (g) *Disciplinary action* includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.
- (h) *Employee* means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

- (i) *Head of an agency* means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.
- (j) *He, his, and him* include she, hers and her.
- (k) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.
- (l) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.
- (m) *Supplemental agency regulation* means a regulation issued pursuant to § 2635.105.

### **§ 2635.103 Applicability to members of the uniformed services.**

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

### **§ 2635.104 Applicability to employees on detail.**

- (a) *Details to other agencies.* Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.
- (b) *Details to the legislative or judicial branch.* An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or

entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

- (c) *Details to non-Federal entities.* Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.
- (d) *Applicability of special agency statutes.* Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings specifically because of his status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

#### **§ 2635.105 Supplemental agency regulations.**

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

- (a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:
  - (1) In the form of a supplement to the regulations in this part; and
  - (2) In addition to the substantive provisions of this part.
- (b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

- (c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:
- (1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;
  - (2) An instruction or other issuance the purpose of which is to:
    - (i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or
    - (ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or
  - (3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

**§ 2635.106 Disciplinary and corrective action.**

- (a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Governmentwide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.
- (b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.
- (c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

**§ 2635.107 Ethics advice.**

- (a) As required by §§ 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under § 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.
- (b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

## SUBPART B - GIFTS FROM OUTSIDE SOURCES

### § 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

### § 2635.202 General standards.

- (a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:
  - (1) From a prohibited source; or
  - (2) Given because of the employee's official position.
- (b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).
- (c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:
  - (1) Accept a gift in return for being influenced in the performance of an official act;
  - (2) Solicit or coerce the offering of a gift;
  - (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

*Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in § 2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.*



- (4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:
  - (i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials; and
  - (ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; or
- (5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(l).

### **§ 2635.203 Definitions.**

For purposes of this subpart, the following definitions shall apply:

- (a) *Agency* has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.
- (b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:
  - (1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
  - (2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

- (3) Loans from banks and other financial institutions on terms generally available to the public;
- (4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;
- (5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;
- (6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
- (7) Anything which is paid for by the Government or secured by the Government under Government contract;

**Note:** Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR part 301-53.

- (8) Any gift accepted by the Government under specific statutory authority, including:
  - (i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and
  - (ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or
- (9) Anything for which market value is paid by the employee.
- (c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

*Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation*

*that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.*

*Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.*

(d) *Prohibited source* means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is *solicited or accepted because of the employee's official position* if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

**Note:** Gifts between employees are subject to the limitations set forth in subpart C of this part.

*Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.*

*Example 2. Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.*

(f) A gift which is *solicited or accepted indirectly* includes a gift:

- (1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or
- (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.

*Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.*

(g) *Vendor promotional training* means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

#### **§ 2635.204 Exceptions.**

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

*Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation.*

*The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.*

*Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.*

*Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at § 2635.204(b) for gifts based on a personal relationship.*

*Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under § 2635.204(a) is a gift to the employee rather than to his employing agency.*

*Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a \$15 computer program disk at X Company's booth, a \$12 appointments calendar at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.*

- (b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: *An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.*

Example 2: *Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.*

- (c) *Discounts and similar benefits.* In addition to those opportunities and benefits excluded from the definition of a gift by § 2635.203(b)(4), an employee may accept:
- (1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and
  - (2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:
    - (i) Offered to members of a group or class in which membership is unrelated to Government employment;
    - (ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or
    - (iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that
  - (3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: *An employee of the Consumer Product Safety Commission may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.*

Example 2: *An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.*

Example 3: *The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.*

(d) *Awards and honorary degrees.*

- (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:
  - (i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and
  - (ii) Under which selection of award recipients is made pursuant to written standards.
- (2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

- (3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

*Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.*

*Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.*

*Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.*

- (e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:

- (1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

*Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.*

*Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.*



- (2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

*Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.*

- (3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

*Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.*

- (4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

- (f) *Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.* An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

*Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.*

- (g) *Widely attended gatherings and other events--(1) Speaking and similar engagements.* When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a

customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

- (2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$285 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.
- (3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.
  - (i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may not appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.
  - (ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

- (4) *Free attendance.* For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

**Note:** There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

- (5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.
- (6) *Accompanying spouse or other guest.* When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

*Example 1: An aerospace industry association that is a prohibited source sponsors an industrywide, two-day seminar for which it charges a fee of \$400 and anticipates attendance of approximately 400. An Air Force contractor pays \$2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds \$285.*

Example 2: *An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organization. Tickets for the event cost \$285 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed \$285. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be \$570 and the invitation is from a person other than the sponsor of the event.*

Example 3: *An employee of the Department of Energy (DOE) and his wife have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.*

Example 4: *An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a), he may accept a token of appreciation for his speech having a market value of \$20 or less.*

Example 5: *An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 de minimis exception at § 2635.204(a).*

Example 6: *An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is*

*in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.*

- (h) *Social invitations from persons other than prohibited sources.* An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:
- (1) The invitation is from a person who is not a prohibited source; and
  - (2) No fee is charged to any person in attendance.

*Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.*

*Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.*

- (i) *Meals, refreshments and entertainment in foreign areas.* An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:
- (1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC, FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;
  - (2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;
  - (3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

- (4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

*Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.*

- (j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.
- (k) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.
- (l) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:
- (1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

**Note:** 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

- (2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

## **§ 2635.205 Proper disposition of prohibited gifts.**

- (a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

- (1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c).

*Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$200.*

- (2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

*Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.*

- (3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

*Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.*

- (4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

- (b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

- (c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

## SUBPART C - GIFTS BETWEEN EMPLOYEES

### § 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

### § 2635.302 General standards.

- (a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:
  - (1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or
  - (2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.
- (b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:
  - (1) The two employees are not in a subordinate-official superior relationship; and
  - (2) There is a personal relationship between the two employees that would justify the gift.
- (c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

### § 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

- (a) *Gift* has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.
- (b) *Indirectly*, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:



- (1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or
  - (2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.
- (c) Subject to paragraph (a) of this section, *market value* has the meaning set forth in § 2635.203(c).
- (d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.
- (e) *Solicit* means to request contributions by personal communication or by general announcement.
- (f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

*Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.*

#### **§ 2635.304 Exceptions.**

The prohibitions set forth in § 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;
- (2) Items such as food and refreshments to be shared in the office among several employees;
- (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and
- (5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of § 630.912 of this title.

*Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$8.*

*Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than \$5. Gifts given on this basis are not occasional.*

*Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.*

*Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.*

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: *The administrative assistant to the personnel director of the Tennessee Valley Authority may send a \$30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.*

Example 2: *A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for \$70.*

Example 3: *Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for \$19. The retiring supervisor may accept the book.*

- (c) *Voluntary contributions.* An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:
- (1) On a special, infrequent occasion as described in paragraph (b) of this section; or
  - (2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: *To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.*

Example 2: *The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.*

Example 3: *Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b). However, subordinates may take up a collection and employees may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.*

Example 4: *Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.*

Example 5: *An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute \$5 for the gift. Her method of collection is improper. Although she may recommend a \$5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.*

## SUBPART D - CONFLICTING FINANCIAL INTERESTS

### § 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. See also part 2640 of this chapter, for additional guidance amplifying § 2635.402.

### § 2635.402 Disqualifying financial interests.

- (a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

**Note:** Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver or determine that an exemption applies, as described in paragraph (d) of this section.

- (b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.*

- (i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

- (ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

**Note:** If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

*Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.*

*Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems contract to LMN would be at most indirect and speculative.*

- (2) *Imputed interests.* For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:
  - (i) The employee's spouse;
  - (ii) The employee's minor child;
  - (iii) The employee's general partner;
  - (iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

- (v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: *An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.*

Example 2: *The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under § 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at § 2635.502.*

- (3) *Particular matter.* The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: *The Internal Revenue Service's amendment of its regulations to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its appeal procedures for disability claimants.*

Example 2: *Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.*

- (4) *Personal and substantial.* To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.
- (c) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.
- (1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.
- (2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: *An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation*



*property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.*

(d) *Waiver of or exemptions from disqualification.* An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory exemption or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) *Regulatory exemptions.* Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been issued by the Office of Government Ethics, based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of employees to whom those exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

(2) *Individual waivers.* An individual waiver enabling the employee to participate in one or more particular matters may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee. See also subpart C of part 2640 of this chapter, for additional guidance.

(3) *Federal advisory committee member waivers.* An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the

employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

- (i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and
  - (ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest. See also subpart C of part 2640 of this chapter, for additional guidance.
- (4) *Consultation and notification regarding waivers.* When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.
- (e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.
  - (1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.
  - (2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a), or if the agency determines in accordance with § 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.
  - (3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.
- (f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

### § 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

**Note:** There is no statute of Governmentwide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part.

- (a) *Agency regulation prohibiting certain financial interests.* An agency may, by supplemental agency regulation issued after February 3, 1993, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Where the agency restricts or prohibits the holding of certain financial interests by its employees' spouses or minor children, any such prohibition or restriction shall be based on a determination that there is a direct and appropriate nexus between the prohibition or restriction as applied to spouses and minor children and the efficiency of the service.
- (b) *Agency determination of substantial conflict.* An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:
  - (1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or
  - (2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

*Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.*

(c) *Definition of financial interest.* For purposes of this section:

- (1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and § 2635.402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

*Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.*

*Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine. Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under § 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of § 2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.*

- (2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv).

*Example 1: The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.*

- (d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.
- (e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

## SUBPART E - IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

### § 2635.501 Overview.

- (a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.
- (b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

**Note:** Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver or exemption, as described in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

## § 2635.502 Personal and business relationships.

- (a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.
- (1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.
  - (2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.
- (b) *Definitions.* For purposes of this section:
- (1) An employee has a *covered relationship* with:
    - (i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;  
  
**Note:** An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.
    - (ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;
    - (iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
    - (iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
    - (v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that

of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

**Note:** Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

- (2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1).
- (3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

Example 1: *An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.*

Example 2: *An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.*

Example 3: *An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.*

Example 4: *An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be*



*likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.*

*Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.*

- (c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.
  - (1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.
  - (2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.
- (d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

*Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.*

*Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.*

*Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency*

*designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.*

- (e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.
  - (1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.
  - (2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.
- (f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

### **§ 2635.503 Extraordinary payments from former employers.**

- (a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

*Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.*

Example 2: *An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.*

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

- (1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of \$10,000, which is paid:
  - (i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and
  - (ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: *The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him \$50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of \$50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.*

- (2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.
- (c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

## SUBPART F - SEEKING OTHER EMPLOYMENT

### § 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." See § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

### § 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

**Note:** An employee who is seeking employment with a person whose financial interests are not affected directly and predictably by particular matters in which he participates personally and substantially has no obligation under this subpart. An employee may, however, be subject to other statutes which impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

#### (a) *Related employment restrictions--*

- (1) *Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.
- (2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that

may be applicable. Regulations implementing the Governmentwide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

- (b) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with § 2635.204(e)(3).

### **§ 2635.603 Definitions.**

For purposes of this subpart:

- (a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

*Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.*

*Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.*

- (b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.
  - (1) An employee has begun seeking employment if he has directly or indirectly:
    - (i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

- (ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:
    - (A) For the sole purpose of requesting a job application; or
    - (B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or
  - (iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.
- (2) An employee is no longer seeking employment when:
- (i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or
  - (ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.
- (3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

*Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.*

*Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.*

Example 3: *An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.*

Example 4: *An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.*

Example 5: *A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.*

Example 6: *A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.*

- (c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:



- (1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and
- (2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

*Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.*

- (d) *Direct and predictable effect, particular matter, and personal and substantial* have the respective meanings set forth in § 2635.402(b)(1), (3) and (4).

#### **§ 2635.604 Disqualification while seeking employment.**

- (a) *Obligation to disqualify.* Unless the employee's participation is authorized in accordance with § 2635.605, the employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of § 2635.603(b). Disqualification is accomplished by not participating in the particular matter.
- (b) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate personally and substantially in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.
- (c) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: *An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.*

Example 2: *An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.*

Example 3: *The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.*

Example 4: *A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.*

- (d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

### **§ 2635.605 Waiver or authorization permitting participation while seeking employment.**

- (a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d). See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

*Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.*

- (b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1)(ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d).

*Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.*

### **§ 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.**

- (a) *Employment or arrangement concerning employment.* An employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3), or by a regulatory exemption under the authority of 18 U.S.C. 208(b)(2). These waivers and exemptions are described in § 2635.402(d). See also subparts B and C of part 2640 of this chapter.

Example 1: *A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).*

Example 2: *An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.*

- (b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in § 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decision making process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: *An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.*

## SUBPART G - MISUSE OF POSITION

### § 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

- (a) Use of public office for private gain;
- (b) Use of nonpublic information;
- (c) Use of Government property; and
- (d) Use of official time.

### § 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

- (a) *Inducement or coercion of benefits.* An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

*Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.*

*Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be*

*expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.*

- (b) *Appearance of governmental sanction.* Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

*Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.*

- (c) *Endorsements.* An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:
- (1) In furtherance of statutory authority to promote products, services or enterprises; or
  - (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

*Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.*

*Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.*

Example 3: *The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."*

Example 4: *An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.*

- (d) *Performance of official duties affecting a private interest.* To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502.
- (e) *Use of terms of address and ranks.* Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

#### **§ 2635.703 Use of nonpublic information.**

- (a) *Prohibition.* An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.
- (b) *Definition of nonpublic information.* For purposes of this section, *nonpublic information* is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:
  - (1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;
  - (2) Is designated as confidential by an agency; or
  - (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: *A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.*

Example 2: *A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.*

Example 3: *An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.*

Example 4: *An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.*

Example 5: *An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.*

#### **§ 2635.704 Use of Government property.**

- (a) *Standard.* An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.
- (b) *Definitions.* For purposes of this section:
  - (1) *Government property* includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data



processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

- (2) *Authorized purposes* are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Example 1: *Under regulations of the General Services Administration at 41 CFR 101-35.201, an employee may make a personal long distance call charged to her personal calling card.*

Example 2: *An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.*

Example 3: *In accordance with Office of Personnel Management regulations at part 251 of this title, an attorney employed by the Department of Justice may be permitted to use her office word processor and agency photocopy equipment to prepare a paper to be presented at a conference sponsored by a professional association of which she is a member.*

#### **§ 2635.705 Use of official time.**

- (a) *Use of an employee's own time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Example 1: *An employee of the Social Security Administration may use official time to engage in certain representational activities on behalf of the employee union of which she is a member. Under 5 U.S.C. 7131, this is a proper use of her official time even though it does not involve performance of her assigned duties as a disability claims examiner.*

Example 2: *A pharmacist employed by the Department of Veterans Affairs has been granted excused absence to participate as a speaker in a conference on drug abuse sponsored by the professional association to which he belongs. Although excused absence granted by an agency in accordance with guidance in chapter 630 of the Federal Personnel Manual allows an employee to be absent from his official duties without charge to his annual leave account, such absence is not on official time.*

- (b) *Use of a subordinate's time.* An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Example 1: *An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during nonduty hours constitutes an improper use of public office for private gain in violation of § 2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.*

## SUBPART H - OUTSIDE ACTIVITIES

### § 2635.801 Overview.

- (a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.
- (b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:
  - (1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;
  - (2) Any agency-specific requirement for prior approval of outside employment or activities;
  - (3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;
  - (4) The limitations on paid and unpaid service as an expert witness;
  - (5) The limitations on participation in professional organizations;
  - (6) The limitations on paid and unpaid teaching, speaking, and writing; and
  - (7) The limitations on fundraising activities.
- (c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.
- (d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:
  - (1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance

- of an official act or for being induced to take or omit to take any action in violation of his official duty;
- (2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;
  - (3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;
  - (4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;
  - (5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;
  - (6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 et seq.;
  - (7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees; and
  - (8) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

### **§ 2635.802 Conflicting outside employment and activities.**

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

- (a) If it is prohibited by statute or by an agency supplemental regulation; or
- (b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

*Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.*

*Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of § 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.*

### **§ 2635.803 Prior approval for outside employment and activities.**

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

**§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.**

- (a) *Presidential appointees to full-time noncareer positions.* A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.
- (b) *Covered noncareer employees.* Covered noncareer employees, as defined in § 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in §§ 2636.301 through 2636.304 of this chapter.

**Note:** In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

- (c) *Definitions.* For purposes of this section:
  - (1) *Outside earned income* has the meaning set forth in § 2636.303(b) of this chapter, except that § 2636.303(b)(8) shall not apply.
  - (2) *Presidential appointee to a full-time noncareer position* means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:
    - (i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS-9, step 1 of the General Schedule;
    - (ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;
    - (iii) A position within the uniformed services; or

- (iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

*Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.*

*Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.*

#### **§ 2635.805 Service as an expert witness.**

- (a) *Restriction.* An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.
- (b) *Additional restriction applicable to certain special Government employees.*
  - (1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.
  - (2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:
    - (i) Is appointed by the President;
    - (ii) Serves on a commission established by statute; or
    - (iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.
- (c) *Authorization to serve as an expert witness.* Provided that the employee's testimony will not violate any of the principles or standards set forth in this part, authorization to provide expert

witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

- (1) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or
  - (2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i).
- (d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

**§ 2635.806 Participation in professional associations. [Reserved]**

**§ 2635.807 Teaching, speaking and writing.**

- (a) *Compensation for teaching, speaking or writing.* Except as permitted by paragraph (a)(3) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.
- (1) *Relationship to other limitations on receipt of compensation.* The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:
    - (i) The requirement contained in § 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and
    - (ii) The prohibitions and limitations in § 2635.804 and in § 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.
  - (2) *Definitions.* For purposes of this paragraph:
    - (i) Teaching, speaking or writing *relates to the employee's official duties* if:
      - (A) The activity is undertaken as part of the employee's official duties;



- (B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;
- (C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;
- (D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b); or
- (E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:
  - (1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;
  - (2) Any ongoing or announced policy, program or operation of the agency; or
  - (3) In the case of a noncareer employee as defined in § 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.
  - (4) The restrictions in paragraphs (a)(2)(i)(E)(2) and (3) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(1) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one-year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

**Note:** Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: *The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities broker.*

Example 2: *A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.*

Example 3: *On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.*

Example 4: *An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.*

Example 5: *An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do*

*not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.*

*Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.*

*Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.*

*Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.*

*Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.*

- (ii) *Agency has the meaning set forth in § 2635.102(a), except that any component of a department designated as a separate agency under § 2635.203(a) shall be considered a separate agency.*

- (iii) *Compensation* includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:
- (A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;
  - (B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place;
  - (C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity; or
  - (D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

**Note to Paragraph (a)(2)(iii):** Independent of § 2635.807(a), other authorities, such as 18 U.S.C. 209, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses. In addition, employees who file financial disclosure reports should be aware that, subject to applicable thresholds and exclusions, travel and travel reimbursements accepted from sources other than the United States Government must be reported on their financial disclosure reports.

*Example 1 to paragraph (a)(2)(iii): A GS-15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a \$200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speaking activity is related to her official duties under § 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a GS-15 employee.*

Example 2 to paragraph (a)(2)(iii): *Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to official duties under § 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in § 2636.303(a) of this chapter, the travel expenses are prohibited compensation as to her.*

Example 3 to paragraph (a)(2)(iii): *A GS-14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(1) and (a)(2)(i)(E)(2) of § 2635.807, but because he is not a covered noncareer employee as defined in § 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.*

Example 4 to paragraph (a)(2)(iii): *An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. 1353 and the implementing General Services Administration regulation, as codified under 41 CFR chapter 304, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under 31 U.S.C. 1353, they are not prohibited compensation under § 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly*

*authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. 4111, or the foreign gifts law, 5 U.S.C. 7342.*

- (iv) *Receive* means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:
  - (A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or
  - (B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.
- (v) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.
- (vi) *Personal and substantial participation* has the meaning set forth in § 2635.402(b)(4).
- (3) *Exception for teaching certain courses.* Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:
  - (i) The regularly established curriculum of:
    - (A) An institution of higher education as defined at 20 U.S.C. 1141(a);
    - (B) An elementary school as defined at 20 U.S.C. 2891(8); or
    - (C) A secondary school as defined at 20 U.S.C. 2891(21); or
  - (ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

*Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government.*

Example 2: *An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.*

Example 3: *An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.*

- (b) *Reference to official position.* An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:
- (1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;
  - (2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and
  - (3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

**Note:** Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: *A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.*

Example 2: *A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.*

Example 3: *An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.*

## **§ 2635.808 Fundraising activities.**

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section:

- (1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:
  - (i) Solicitation of funds or sale of items; or
  - (ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.



- (2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

**Note:** This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

*Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost \$150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.*

- (3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

*Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.*

Example 2: *A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g)(1), he may partake of the meal provided to him at the dinner.*

- (4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: *An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.*

- (b) *Fundraising in an official capacity.* An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: *Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.*

- (c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity provided that he does not:

- (1) Personally solicit funds or other support from a subordinate or from any person:
- (i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d); or

- (ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of § 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties.
- (2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or
- (3) Engage in any action that would otherwise violate this part.

*Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.*

*Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 regarding use of Government property.*

*Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.*

## **§ 2635.809 Just financial obligations.**

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

## **SUBPART I - RELATED STATUTORY AUTHORITIES**

### **§ 2635.901 General.**

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

### **§ 2635.902 Related statutes.**

- (a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).
- (b) The prohibition against solicitation or receipt of illegal gratuities (18 U.S.C. 201(c)).
- (c) The prohibition against seeking or receiving compensation for certain representational services before the Government (18 U.S.C. 203).
- (d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).
- (e) The post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this chapter).
- (f) The prohibition on certain former agency officials' acceptance of compensation from a contractor (41 U.S.C. 423(d)).
- (g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).
- (h) The actions required of certain agency officials when they contact, or are contacted by, offerors or bidders regarding non-Federal employment (41 U.S.C. 423(c)).
- (i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).
- (j) The prohibition against gifts to superiors (5 U.S.C. 7351).

- (k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (5 U.S.C. 7353).
- (l) The prohibition against fraudulent access and related activity in connection with computers (18 U.S.C. 1030).
- (m) The provisions governing receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).
- (n) [Reserved]
- (o) The prohibitions against certain political activities (5 U.S.C. 7321 through 7326 and 18 U.S.C. 602, 603, 606 and 607).
- (p) The prohibitions against disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).
- (q) The general prohibition (18 U.S.C. 219) against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (22 U.S.C. 611 through 621).
- (r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).
- (s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).
- (t) The prohibition against misuse of a Government vehicle (31 U.S.C. 1344).
- (u) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).
- (v) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).
- (w) The prohibition against concealing, mutilating or destroying a public record (18 U.S.C. 2071).
- (x) The prohibition against counterfeiting or forging transportation requests (18 U.S.C. 508).
- (y) The restrictions on disclosure of certain sensitive Government information under the Freedom of Information Act and the Privacy Act (5 U.S.C. 552 and 552a).
- (z) The prohibitions against disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(a)).
- (aa) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).

- (bb) The prohibitions on disclosing and obtaining certain procurement information (41 U.S.C. 423(a) and (b)).
- (cc) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).
- (dd) The prohibition against certain personnel practices (5 U.S.C. 2302).
- (ee) The prohibition against interference with civil service examinations (18 U.S.C. 1917).
- (ff) The restrictions on use of public funds for lobbying (18 U.S.C. 1913).
- (gg) The prohibition against participation in the appointment or promotion of relatives (5 U.S.C. 3110).
- (hh) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).
- (ii) The prohibition against conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).
- (jj) The prohibition against embezzlement or conversion of Government money or property (18 U.S.C. 641).
- (kk) The prohibition against failing to account for public money (18 U.S.C. 643).
- (ll) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

**Appendix C**  
*Treasury Supplemental Standards  
of Ethical Conduct*  
*(as of January 1, 2004)*

## 5 PART 735 (2003)

### EMPLOYEE RESPONSIBILITIES AND CONDUCT

#### SUBPART A – GENERAL PROVISIONS

##### 735.101 Definitions.

In this part:

*Agency* means an Executive agency (other than the General Accounting Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

*Employee* means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

*Special Government employee* means a “special Government employee,” as defined in 18 U.S.C. 202, who is employed in the executive branch, but does not include a member of the uniformed services.

*Uniformed services* has the meaning given that term by 5 U.S.C. 2101(3).

##### § 735.102 Disciplinary action.

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

##### § 735.103 Other regulations pertaining to conduct.

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may be cause for the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

## SUBPART B – STANDARDS OF CONDUCT

##### § 735.201 Gambling.

(a) While on Government-owned or leased property or while on duty for the Government, an employee shall not conduct, or participate in, any gambling activity including the operation of a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

- (1) Necessitated by an employee's official duties; or
- (2) Under section 7 of Executive Order 12353 and similar agency-approved activities.

##### § 735.202 Safeguarding the examination process.

(a) An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) of this section if:

- (1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or
- (2) Such preparation is authorized in writing by the Director of the Office of Personnel Management or his or her designee, or by the Director General of the Foreign Service of his or her designee, as applicable.

##### § 735.203 Conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.



**Appendix D**  
*Employee Responsibilities and Conduct,*  
*5 C.F.R. Part 735*

## 5 PART 735 (2003)

### EMPLOYEE RESPONSIBILITIES AND CONDUCT

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An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

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In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may be cause for the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

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- (1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or
- (2) Such preparation is authorized in writing by the Director of the Office of Personnel Management or his or her designee, or by the Director General of the Foreign Service of his or her designee, as applicable.

##### § 735.203 Conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

**Appendix E**  
*Additional Employee Rules of  
Conduct, 31 C.F.R. Part 0*

DEPARTMENT OF THE TREASURY

**31 CFR Part 0**

**Employee Rules of Conduct**

**Subpart A--General Provisions**

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0.102 Policy.

0.103 Definitions.

**Responsibilities**

0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.

0.105 Deputy Ethics Official.

0.106 Bureau Heads.

0.107 Employees.

**Subpart B--Rules of Conduct**

0.201 Political activity.

0.202 Strikes.

0.203 Gifts or gratuities from foreign governments.

0.204 Use of controlled substances and intoxicants.

0.205 Care of documents and data.

0.206 Disclosure of information.

0.207 Cooperation with official inquiries.

0.208 Falsification of official records.

0.209 Use of Government vehicles.

0.210 Conduct while on official duty or on

Government property.

0.211 Soliciting, selling and canvassing.

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0.213 General conduct prejudicial to the Government.

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0.217 Personal financial interests.

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0.301 Applicability of subpart B.

0.302 Service with other Federal agencies.

**Subpart D--Advisers to the Department**

0.401 Advisers to the Department.

**Authority:** 5 U.S.C. 301.

**Subpart A--General Provisions**

**§ 0.101 -- Purpose.**

(a) The Department of the Treasury Employee Rules of Conduct (Rules) are separate from and additional to the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) (5 CFR part 2635) and the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards) (to be codified at 5 CFR part 3101). The Rules prescribe employee rules of conduct and procedure and provide for disciplinary action for the violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards, and any other rule, regulation or law governing Department employees.

(b) The Rules are not all-inclusive and may be modified by interpretive guidelines and procedures issued by the Department's bureaus. The absence of a specific published rule of conduct covering an action does not constitute a condonation of that action or indicate that the action would not result in corrective or disciplinary action.

#### **§ 0.102 -- Policy.**

(a) All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part 735), and any bureau issued rules.

(b) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to:

- (1) Reassignment of work duties;
- (2) Disqualification from a particular assignment;
- (3) Divestment of a conflicting interest; or
- (4) Other appropriate action.

(c) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law.

#### **§ 0.103 -- Definitions.**

The following definitions are used throughout this part:

(a) *Adviser* means a person who provides advice to the Department as a representative of an

outside group and is not an employee or special Government employee as those terms are defined in § 0.103.

(b) *Bureau* means:

- (1) Bureau of Alcohol, Tobacco and Firearms;
- (2) Bureau of Engraving and Printing;
- (3) Bureau of the Public Debt;
- (4) Departmental Offices;
- (5) Federal Law Enforcement Training Center;
- (6) Financial Management Service;
- (7) Internal Revenue Service;
- (8) Legal Division;
- (9) Office of the Comptroller of the Currency;
- (10) Office of the Inspector General;
- (11) Office of Thrift Supervision;
- (12) United States Customs Service;
- (13) United States Mint;
- (14) United States Secret Service; and
- (15) Any organization designated as a bureau by the Secretary pursuant to appropriate authority.

(c) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution as specified in 5 CFR 2635.102(k).

(d) *Regular employee* or *employee* means an officer or employee of the Department of the Treasury but does not include a special Government employee.

(e) *Special Government employee* means an officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See 18 U.S.C. 202(a).

#### **Responsibilities**

#### **§ 0.104 -- Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.**

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The

DAEO is responsible for managing the Department's ethics program, including coordinating ethics counseling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. See 5 CFR 2638.203. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official.

#### **§ 0.105 -- Deputy Ethics Official.**

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organization. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules.

#### **§ 0.106 -- Bureau Heads.**

Bureau heads or designees are required to:

- (a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in 18 U.S.C. 207 and 5 CFR part 2641 and any other applicable law or regulation.
- (b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of

the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation.

- (c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense.

#### **§ 0.107 -- Employees.**

- (a) Employees are required to:
  - (1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules;
  - (2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear;
  - (3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service, any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and
  - (4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of information during the representation of a

bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General.

(b) The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section will be maintained to the extent appropriate under the circumstances.

## **Subpart B--Rules of Conduct**

### **§ 0.201 -- Political activity.**

(a) Employees may:

- (1) Take an active part in political management or in political campaigns to the extent permitted by law (5 U.S.C. 7321-7326); and
- (2) Vote as they choose and express their opinions on political subjects and candidates.

(b) Employees may not use their official authority or influence to interfere with or affect election results.

(c) Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

**Note:** The Hatch Act Reform Amendments of 1993 significantly reduced the statutory restrictions on the political activity of most Department employees. However, career members of the Senior Executive Service and employees of the Secret Service, the Internal Revenue Service, Office of Criminal Investigation, the Customs Service, Office of Investigative Programs, and the Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, remain subject to significant restrictions on their political activities.

### **§ 0.202 -- Strikes.**

Employees shall not strike against the Government.

### **§ 0.203 -- Gifts or gratuities from foreign governments.**

(a) The United States Constitution prohibits employees from accepting gifts, emoluments, offices, or titles from a foreign government without the consent of the Congress. Congress has consented to an employee accepting and retaining a gift from a foreign government that is of minimal value and offered as a souvenir or mark of courtesy, unless otherwise prohibited by bureau regulation (5 U.S.C. 7342). Minimal value is prescribed in 41 CFR part 101-49 and was set at \$ 225.00 on the date that the Rules became effective.

(b) All gifts exceeding minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, shall be accepted and deposited with the Department within sixty days of acceptance. If the gift is travel or expenses for travel taking place entirely outside the United States, it shall be reported within thirty days (see 5 U.S.C. 7342(c)(1)(B)(ii)).

(c) As used in paragraph (b) of this section, *Deposit with the Department* means delivery to the Department Gift Unit or other depository as authorized by the Treasury Directive on Foreign Gifts (Treasury Directive 61-04).

(d) All foreign gifts must be reported as prescribed in the Treasury Directive on Foreign Gifts (Treasury Directive 61-04).

### **§ 0.204 -- Use of controlled substances and intoxicants.**

Employees shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty, or use a controlled substance or intoxicant in a manner that adversely affects their work performance.

### **§ 0.205 -- Care of documents and data.**

(a) Employees shall not conceal, remove, alter, destroy, mutilate or access documents or data in the custody of the Federal Government without proper authority.

(b) Employees are required to care for documents according to Federal law and regulation, and Department procedure (18 U.S.C. 2071, 5 U.S.C. 552, 552a).

(c) The term *documents* includes, but is not limited to, any writing, recording, computer tape or disk, blueprint, photograph, or other physical object on which information is recorded.

**§ 0.206 -- Disclosure of information.**

Employees shall not disclose official information without proper authority, pursuant to Department or bureau regulation. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law (31 CFR 1.9, 1.10, and 1.28(b)).

**§ 0.207 -- Cooperation with official inquiries.**

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

**§ 0.208 -- Falsification of official records.**

Employees shall not intentionally make false, misleading or ambiguous statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include among other things: Transactions with the public, government agencies or fellow employees; application forms and other forms that serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records and time and attendance records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with an employee's duties; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

**§ 0.209 -- Use of Government vehicles.**

Employees shall not use Government vehicles for

unofficial purposes, including to transport unauthorized passengers. The use of Government vehicles for transporting employees between their domiciles and places of employment must be authorized by statute (See, e.g., 31 U.S.C. 1344).

**§ 0.210 -- Conduct while on official duty or on Government property.**

Employees must adhere to the regulations controlling conduct when they are on official duty or in or on Government property, including the Treasury Building, Treasury Annex Building and grounds; the Bureau of Engraving and Printing buildings and grounds; the United States Mint buildings and grounds; the grounds of the Federal Law Enforcement Training Center; and Treasury-occupied General Services Administration buildings and grounds (see 31 CFR parts 91, 407, 605, 700).

**§ 0.211 -- Soliciting, selling and canvassing.**

Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising in any space occupied by the Department without appropriate authority.

**§ 0.212 -- Influencing legislation or petitioning Congress.**

(a) Employees shall not use Government time, money, or property to petition a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling, through the proper channels, of matters relating to legislation in which the Department of the Treasury has an interest.

(b) Employees, individually or collectively, may petition Congress or Members of Congress or furnish information to either House of Congress when not using Government time, money or property (5 U.S.C. 7211).

**§ 0.213 -- General conduct prejudicial to the Government.**

Employees shall not engage in criminal,



infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

**§ 0.214 -- Nondiscrimination.**

(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

(b) An employee who engages in discriminatory conduct may be disciplined under these rules. However, this section does not create any enforceable legal rights in any person.

**§ 0.215 -- Possession of weapons and explosives.**

(a) Employees shall not possess firearms, explosives, or other dangerous or deadly weapons, either openly or concealed, while on Government property or official duty.

(b) The prohibition in paragraph (a) of this section does not apply to employees who are required to possess weapons or explosives in the performance of their official duties.

**§ 0.216 -- Privacy Act.**

Employees involved in the design, development, operation, or maintenance of any system of records or in maintaining records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), shall comply with the conduct regulations delineated in 31 CFR 1.28(b).

**§ 0.217 -- Personal financial interests.**

(a) Employees may hold the following financial interests without violating 18 U.S.C. 208(a):

- (1) The stocks or bonds of a publicly traded corporation with a value of \$ 1000 or less; and
- (2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which

an employee has invested.

(b) The Department has found that the financial interests listed in paragraph (a) of this section are too remote and inconsequential to affect the integrity of an employee's service.

**Subpart C--Special Government Employees**

**§ 0.301 -- Applicability of subpart B.**

The rules of conduct contained in subpart B of this part apply to special Government employees employed with the Treasury Department. The regulations contained in § 0.201 of subpart B, concerning political activity, apply to special Government employees only on the days that they serve the Department. Treasury bureaus are responsible for informing special Government employees employed with them of the applicability of bureau specific statutes or regulations.

**§ 0.302 -- Service with other Federal agencies.**

A special Government employee serving concurrently in the Department and in a Federal agency other than the Department is required to inform the Department and the agency in which he serves of the arrangement so that appropriate administrative measures may be taken.

**Subpart D--Advisers to the Department**

**§ 0.401 -- Advisers to the Department.**

(a) An adviser or advisory committee member includes an individual who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee of the Department. Questions concerning whether an individual serves the Department in the capacity of an adviser, employee, or special Government employee shall be addressed to the Designated Agency Ethics Official or a Deputy Ethics Official.

(b) Advisers or advisory committee members are not required to follow the Rules and are not

generally required by the Department to file financial disclosure statements; nevertheless, they should be guided by the regulations in this part covering such issues as public disclosure of official information (§ 0.206), conduct (§ 0.211 and § 0.213), and gifts or gratuities from Foreign governments (§ 0.203).

**Appendix F**  
*Practice by Former Government Employees  
before the IRS, 31 C.F.R. Section 10.25*

## TITLE 31 -- CODE OF FEDERAL REGULATIONS

### PART 10 -- PRACTICE BEFORE THE INTERNAL REVENUE SERVICE, SUBPART B -- DUTIES AND RESTRICTIONS RELATING TO PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

#### **31 C.F.R. § 10.25 Practice by former Government employees, their partners and their associates.**

(a) Definitions. For purposes of this section --

(1) Assist means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly or indirectly.

(2) Government employee is an officer or employee of the United States or any agency of the United States, including a special government employee as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) Member of a firm is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) Practitioner includes any individual described in paragraph (f) of § 10.2.

(5) Official responsibility means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6) Participate or participation means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering

advice of a substantial nature.

(7) Rule includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin. Rule does not include a transaction as defined in paragraph (a)(8) of this section.

(8) Transaction means any decision, determination, finding, letter ruling, technical advice, Chief Counsel advice, or contract or the approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. Transaction does not include rule as defined in paragraph (a)(7) of this section.

(b) General rules. (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who participated in a transaction may, subsequent to his or her Government employment, represent or knowingly assist, in that transaction, any person who is or

was a specific party to that transaction.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a transaction may not, within two years after his or her Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, he or she had official responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) Firm representation. (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(2) or (3) of this section apply to the former Government employee, in that transaction, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government

employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the transaction(s) requiring isolation and it must be filed with the Director of Practice (and at such other place(s) directed by the Director of Practice) and in such other place and in the manner prescribed by rule or regulation.

(d) Pending representation. Practice by former Government employees, their partners and associates with respect to representation in specific matters where actual representation commenced before July 26, 2002 is governed by the regulations set forth at 31 CFR part 10 revised as of July 1, 2002. The burden of showing that representation commenced before July 26, 2002 lies with the former Government employees, and their partners and associates.

**Appendix G**  
*FAR Part 3 – Improper Business Practices and  
Personal Conflicts of Interest*

## **FAR – Part 3**

### **Improper Business Practices and Personal Conflicts of Interest**

**FAC 2001-14  
(23 June 2003)**

#### **3.0 00 – Scope of Part.**

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

#### **Subpart 3.1 – Safeguards**

##### **3.101 – Standards of Conduct.**

###### **3.101-1 – General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

###### **3.101-2 – Solicitation and Acceptance of Gratuities by Government Personnel.**

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who

(a) has or is seeking to obtain Government business with the employee's agency,

(b) conducts activities that are regulated by the employee's agency, or

(c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

##### **3.101-3 – Agency Regulations.**

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain –

(1) Agency-authorized exceptions to 3.101-2; and  
(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended 18 U.S.C.207.

##### **3.102 – [Reserved]**

##### **3.103 – Independent Pricing.**

###### **3.103-1 – Solicitation Provision.**

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless –

(a) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

###### **3.103-2 – Evaluating the Certification.**

(a) *Evaluation guidelines.*

(1) None of the following, in and of itself, constitutes "disclosure" as it is used in

subparagraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of subparagraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if -

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

*(b) Rejection of offers suspected of being collusive.*

(1) If the offeror deleted or modified subparagraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified subparagraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under subparagraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the

contracting officer shall report the situation to the Attorney General in accordance with 3.303.

(4) The determination made under subparagraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

### **3.103-3 - The Need for Further Certifications.**

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

### **3.104 - Procurement Integrity.**

#### **3.104-1 - Definitions.**

As used in this section-

"Agency ethics official" means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including -

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

"Contractor bid or proposal information" means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services



Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

- (2) Indirect costs and direct labor rates.
- (3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- (4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.
- (5) Information marked in accordance with 52.215-1(e).

"Decision to award a subcontract or modification of subcontract" means a decision to designate award to a particular source.

"Federal agency procurement" means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

"In excess of \$10,000,000" means –

- (1) The value, or estimated value, at the time of award, of the contract, including all options;
- (2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;
- (3) Any multiple award schedule contract unless the contracting officer documents a lower estimate.
- (4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;
- (5) The amount paid or to be paid in settlement of a claim; or
- (6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

"Official" means –

- (1) An officer, as defined in 5 U.S.C. 2104;
- (2) An employee, as defined in 5 U.S.C. 2105;
- (3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or
- (4) A special Government employee, as defined in 18 U.S.C. 202.

"Participating personally and substantially in a Federal agency procurement" means –

- (1) Active and significant involvement of an official in any of the following activities directly

related to that procurement:

- (i) Drafting, reviewing, or approving the specification or statement of work for the procurement.
- (ii) Preparing or developing the solicitation.
- (iii) Evaluating bids or proposals, or selecting a source.
- (iv) Negotiating price or terms and conditions of the contract.
- (v) Reviewing and approving the award of the contract.

(2) "Participating personally" means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) "Participating substantially" means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

- (i) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.
- (ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.
- (iii) Clerical functions supporting the conduct of

a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications. “Source selection evaluation board” means any board, team, council, or other group that evaluates bids or proposals.

### **3.1 04-2 – General.**

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act (41 U.S.C.423) referred to as “the Act”). Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104-3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example –

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353, and 5 CFR Part 2635;

(2) Contracts with an offeror during the conduct of an acquisition may constitute “see employment,” (see subpart F of 5 CFR Part 2635 and 3.104(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18

U.S.C. 208 also may require an employee’s disqualification from participation in the acquisition even if the employee’s duties may not be considered “participating personally and substantially,” as this term is defined in 3.104-1; (3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR Parts 2637 and 2641, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee’s official responsibility; (4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905; (5) Release of information both before and after award (see 3.104-4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and (6) Using nonpublic information to further an employee’s private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

### **3.104-3 – Statutory and Related Prohibitions, Restrictions, and Requirements.**

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).*

(1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104-4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who –

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or

relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).*

(1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must –

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104-5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because –

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment" in 5 CFR 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.

(3) Agencies must retain reports of employment contracts for 2 years from the date the report was submitted.

(4) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal

statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See 3.104-2(b)(2).

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).*

(1) A former official of a Federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official –

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to –

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date –

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this

subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

### **3.104-4 - Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information.**

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the "source selection information" definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend "*Source Selection Information - See FAR 2.101 and 3.104.*" Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in subparagraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with

52.215-1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h)

(e) This section does not restrict or prohibit -

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize -

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is

restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104-2(b)(5) and subpart 24.2.)

### **3.104-5 – Disqualification.**

(a) *Contacts through agents or other intermediaries.* Employment contacts between the employee and the offeror, that are conducted through agents, or other intermediaries, may require disqualification under 3.104-3(c)(1). These contacts may also require disqualification under other statutes and regulations. (See 3.104-2(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104-3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104-3(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must –

- (1) Identify the procurement;
- (2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and
- (3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.*

(1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance

with 3.104-3(c)(1)(ii).

(2) After the conditions of 3.104-3(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of 18 U.S.C. 208 and 5 CFR Part 2635 regarding any resumed participation in a procurement matter.

Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual receives–

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of subpart F of 5 CFR part 2635.

### **3.104-6 – Ethics Advisory Opinions Regarding Prohibitions On a Former Official's Acceptance of Compensation from a Contractor.**

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104-3(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official prior to accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the –

(1) Procurement(s), or decision(s) on matters under 3.104-3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured

or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)

(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

### **3.104-7 - Violations or Possible Violations.**

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see

3.104-3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as -

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to -

(1) If a contract has not been awarded -

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the

interests of the Government.

(2) If a contract has been awarded –

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which –

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either –

(1) Exchanging the information covered by such subsections for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

### **3.104-8 – Criminal and Civil Penalties, and Further Administrative Remedies.**

Criminal and civil penalties, and administrative remedies, may apply to conduct which violates the Act (see 3.104-3). See 33.102(f) for special rules regarding bid protests. See 3.104-7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104-3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104-3, knowing that the official has not complied with 3.104-3(c)(1), is subject to the criminal, civil or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104-5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

### **3.104-9 – Contract Clauses.**

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at –

(a) 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity, and

(b) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity.

## **Subpart 3.2 – Contractor Gratuities to Government Personnel**

### **3.201 – Applicability.**

This subpart applies to all executive agencies, except that coverage concerning exemplary damages applies only to the Department of Defense (10 U.S.C. 2207).

### **3.202 – Contract Clause.**

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

### **3.203 – Reporting Suspected Violations of the Gratuities Clause.**

Agency personnel shall report suspected violations of the Gratuities clause to the contracting officer or other designated official in accordance with agency procedures. The agency reporting procedures shall be published as an implementation of this section 3.203 and shall clearly specify –

- (a) What to report and how to report it; and
- (b) The channels through which reports must pass, including the function and authority of each official designated to review them.

### **3.204 – Treatment of Violations.**

(a) Before taking any action against a contractor, the agency head or a designee shall determine, after notice and hearing under agency procedures, whether the contractor, its agent, or another representative, under a contract containing the Gratuities clause –

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally must be inferred).

(b) Agency procedures shall afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. The procedures should be as informal as practicable, consistent with principles of fundamental fairness.

(c) When the agency head or designee determines that a violation has occurred, the

Government may –

- (1) Terminate the contractor's right to proceed;
- (2) Initiate debarment or suspension measures as set forth in Subpart 9.4; and
- (3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.

### **Subpart 3.3 – Reports of Suspected Antitrust Violations**

#### **3.301 – General.**

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions for possible referral to–

- (1) The Attorney General under 3.303 and
- (2) The agency office responsible for contractor debarment and suspension under Subpart 9.4.

#### **3.302 – Definitions.**

As used in this subpart–

“Identical bids” means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

“Line item” means an item of supply or service, specified in a solicitation, that the offeror must separately price.

#### **3.303 – Reporting Suspected Antitrust Violations.**

(a) Agencies are required by 41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These



reports are in addition to those required by Subpart 9.4.

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) below identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include –

- (1) The existence of an “industry price list” or “price agreement” to which contractors refer in formulating their offers;
- (2) A sudden change from competitive bidding to identical bidding;
- (3) Simultaneous price increases or follow-the-leader pricing;
- (4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
- (5) Division of the market, so that certain competitors bid low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;
- (6) Establishment by competitors of a collusive price estimating system;
- (7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;
- (8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and
- (9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

(d) Identical bids shall be reported under this section if the agency has some reason to believe

that the bids resulted from collusion.

(e) For offers from foreign contractors for contracts to be performed outside the United States and its outlying areas, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports shall be addressed to the

Attorney General  
U.S. Department of Justice  
Washington, DC 20530  
Attention: Assistant Attorney General  
Antitrust Division

and shall include –

- (1) A brief statement describing the suspected practice and the reason for the suspicion; and
- (2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

### **Subpart 3.4 – Contingent Fees**

#### **3.400 – Scope of Subpart.**

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 2306(b) and 41 U.S.C.254(a).

#### **3.401 – Definitions.**

As used in this subpart–

“Bona fide agency” means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee” means a person, employed by a contractor and subject to the contractor’s supervision and control as to time,

place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract. “Improper influence” means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

### **3.402 – Statutory Requirements.**

Contractors’ arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. In 10 U.S.C.2306(b) and 41 U.S.C.254(a), Congress affirmed this public policy but permitted certain exceptions. These statutes –

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

### **3.403 – Applicability.**

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

### **3.404 – Contract Clause.**

The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see Parts 2 and 12).

### **3.405 – Misrepresentations or Violations of the Covenant Against Contingent Fees.**

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

- (1) If before award, reject the bid or proposal.
- (2) If after award, enforce the Government’s right to annul the contract or to recover the fee.
- (3) Initiate suspension or debarment action under Subpart 9.4.
- (4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

### **3.406 – Records.**

For enforcement purposes, agencies shall preserve any specific evidence of one or more of the violations in 3.405(a), together with all other pertinent data, including a record of actions taken. Contracting offices shall not retire or destroy these records until it is certain that they are no longer needed for enforcement purposes. If the original record is maintained in a central file, a copy must be retained in the contract file.

## **Subpart 3.5 – Other Improper Business Practices**

### **3.501 – Buying-In.**

#### **3.501-1 – Definition.**

“Buying-in,” as used in this section, means

submitting an offer below anticipated costs, expecting to –

- (1) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or
- (2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

### **3.501-2 – General.**

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of

- (1) Change orders or
- (2) Follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using –

- (1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or
- (2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see Subpart 17.2).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (e.g., amortization of nonrecurring costs (see 15.408, Table 15-2, paragraph A., column (2) under “ Formats for Submission of Line Item Summaries”) and treatment of unreasonable price quotations (see 15.405).

### **3.502 – Subcontractor Kickbacks.**

#### **3.502-1 – Definitions.**

As used in this section–

“Kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or

in connection with a subcontract relating to a prime contract.

“Person” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract” means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” means a person who has entered into a prime contract with the United States.

“Prime Contractor employee” means any officer, partner, employee, or agent of a prime contractor.

“Subcontract” means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor” –

- (1) Means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and
- (2) Includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

#### **3.502-2 – Subcontractor Kickbacks.**

The Anti-Kickback Act of 1986 (41 U.S.C.51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act

–

(a) Prohibits any person from –

- (1) Providing, attempting to provide, or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United

States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this subsection.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that –

(1) The contracting officer may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against the prime contractor under subparagraph (d)(1) of this subsection; and

(3) An offset under subparagraph (d)(1) or a direction under subparagraph (d)(2) of this subsection is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

(e) Authorizes contracting officers to order that sums withheld under subparagraph (d)(2) of this subsection be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that it be retained by the prime contractor.

(f) Requires the prime contractor to notify the contracting officer when the withholding under subparagraph (d)(2) of this subsection has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice any possible violation of the Act when the prime contractor or subcontractor has reasonable grounds to believe such violation

may have occurred.

(h) Provides that, for the purpose of ascertaining whether there has been a violation of the Act with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

(i) Requires each contracting agency to include in each prime contract exceeding \$100,000 for other than commercial items (see Part 12), a requirement that the prime contractor shall –

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Act.

(j) Notwithstanding paragraph (i) of this subsection, a prime contractor shall cooperate fully with any Federal government agency investigating a violation of Section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

### **3.502-3 – Contract Clause.**

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in

solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see Part 12).

### **3.503 – Unreasonable Restrictions on Subcontractor Sales.**

#### **3.503-1 – Policy.**

10 U.S.C. 2402 and 41 U.S.C. 253g require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

#### **3.503-2 – Contract Clause.**

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

### **Subpart 3.6 – Contracts With Government Employees or Organizations Owned or Controlled by Them**

#### **3.601 – Policy.**

(a) Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S.C. 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless –

(1) The contract arises directly out of the

individual's activity as a special Government employee;

(2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or

(3) Another conflict of interest is determined to exist.

#### **3.602 – Exceptions.**

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

### **3.603 – Responsibilities of the Contracting Officer.**

(a) Before awarding a contract, the contracting officer shall obtain an authorization under 3.602 if –

(1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and

(2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer shall comply with the requirements and guidance in Subpart 9.5 before awarding a contract to an organization owned or substantially owned or controlled by Government employees.

### **Subpart 3.7 – Voiding and Rescinding Contracts**

#### **3.700 – Scope of Subpart.**

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which –

(1) There has been a final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement

contract, or similar misconduct; or  
(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

(b) This subpart does not prescribe policies or procedures for, or govern the exercise of, any other remedy available to the Government with respect to such contracts, including but not limited to, the common law right of avoidance, rescission, or cancellation.

### **3.701 – Purpose.**

This subpart provides –

(a) An administrative remedy with respect to contracts in relation to which there has been –  
(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or  
(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

### **3.702 – Definition.**

“Final conviction” means a conviction, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed.

### **3.703 – Authority.**

(a) Section 1(e) of Public Law 87-849, 18 U.S.C. 218 (“the Act”), empowers the President or the heads of executive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201-224). Executive Order 12448, November 4, 1983, delegates the President’s authority under the Act to the heads of the executive agencies and military departments.

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the OFPP Act), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27 (a) or (b) of the OFPP Act, to consider rescission of a contract with respect to which –

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or  
(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

### **3.704 – Policy.**

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201-224 involving or relating to contracts awarded by an agency, the agency head or designee, shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201-224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with Subpart 9.4, Debarment, Suspension, and Ineligibility, if debarment has

not been initiated, or is not in effect at the time the final conviction is entered.

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act, or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation –

- (1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104-7); and
- (2) Recommending the initiation of suspension or debarment proceedings in accordance with Subpart 9.4.

### **3.705 – Procedures.**

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C.201-224 involving or relating to agency contracts shall be reported promptly to the agency head or designee for that official's consideration. The agency head or designee shall promptly notify the Civil Division, Department of Justice, that the action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-Making Process.* Agency procedures governing the voiding and rescinding decision-making process shall be as informal as practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies shall provide the following:

- (1) A notice of proposed action to declare void and rescind the contract shall be made in writing and sent by certified mail, return receipt requested.
- (2) A thirty calendar day period after receipt of

the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity shall be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry shall be made regarding the validity of a conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official shall issue a written decision which –

- (i) States that determination;
- (ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and
- (iii) States the amount due and the property to be returned to the agency.

(d) *Notice of Proposed Action.* The notice of proposed action, as a minimum shall –

- (1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C.218;
- (2) Specifically identify the contracts affected by the action;
- (3) Specifically identify the offense or final conviction on which the action is based;
- (4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;
- (5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;
- (6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and
- (7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final Agency Decision.* The final agency decision shall be based on the information available to the agency head or designee,

including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 801-813, or Part 32. Therefore, the procedures required by the CDA and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

### **Subpart 3.8 – Limitation on the Payment of Funds to Influence Federal Transactions**

#### **3.800 – Scope of Subpart.**

This subpart prescribes policies and procedures implementing section 319 of the Department of Interior and Related Agencies Appropriations Act, Pub. L. 101-121, which added a new section 1352 to title 31, United States Code, entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions” (the Act).

#### **3.801 – Definitions.**

“Agency,” as used in this section, means an executive agency as defined in 2.101.

“Covered Federal action,” as used in this section, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. “Indian tribe,” and “tribal organization,” as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this section, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government,” as used in this section, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency,” as used in this section, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;
- (c) A special Government employee, as defined in section 202, title 18, United States Code; and
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

“Person,” as used in this section, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this section, means, with respect to a regularly



employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this section, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient,” as used in this section, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this section, means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

### **3.802 – Prohibitions.**

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding

of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C.1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person’s products or

services, conditions or terms of sale, and service capabilities;

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission.

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of –

(A) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade

associations.

(ii) For purposes of subdivision (c)(2)(i) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i)(A) and (B) of this section are permitted under this section.

(v) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

### **3.803 – Certification and Disclosure.**

(a) Any contractor who requests or receives a

Federal contract exceeding \$100,000 shall submit the certification and disclosures required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) of this section. An event that materially affects the accuracy of the information reported includes –

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.

(c) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

### **3.804 – Policy.**

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

### **3.805 – Exemption.**

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

### **3.806 – Processing Suspected Violations.**

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

### **3.807 – Civil Penalties.**

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3808, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

### **3.808 – Solicitation Provision and Contract Clause.**

(a) The provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed \$100,000.

(b) The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed \$100,000.

## **Subpart 3.9 – Whistleblower Protections for Contractor Employees**

### **3.900 – Scope of Subpart.**

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

### **3.901 – Definitions.**

As used in this subpart–

“Authorized official of an agency,” means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

“Authorized official of the Department of Justice,” means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

“Inspector General,” means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

### **3.902 – Applicability.**

This subpart applies to all Government contracts.

### **3.903 – Policy.**

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

### **3.904 – Procedures for Filing Complaints.**

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain –

- (1) The name of the contractor;
- (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (3) The substantial violation of law giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act; and
- (5) The specific nature and date of the reprisal.

### **3.905 – Procedures for Investigating Complaints.**

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to –

- (1) The complainant and any person acting on the complainant’s behalf;
- (2) The contractor alleged to have committed the violation; and
- (3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

### **3.906 – Remedies.**

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

- (1) Order the contractor to take affirmative action to abate the reprisal.
- (2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- (3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

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